CAREER CRIMINAL LIFE SENTENCE ACT OF 1981

HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1688, S. 1689, and S. 1690

OCTOBER 26 AND DECEMBER 10, 1981

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[97th Congress]

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CAREER CRIMINAL LIFE SENTENCE ACT OF 1981

MONDAY, OCTOBER 26, 1981

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 5110 Dirksen Senate Office Building, Hon. Arlen Specter, chairman of the subcommittee, presiding.

Present: Senator Specter.

Also present: Bruce A. Cohen, chief counsel and Kevin Mills, counsel.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, ladies and gentlemen.

Today's hearing is designed to focus on a specific and particularly important aspect of crime in this country, that which is committed by the career criminal. These offenders have become known by a variety of different names: repeat offenders, habitual offenders, and most graphically, professional predators. Their activities are, in my mind at the core of the violent street crime problem tormenting this country today. These criminals present a special problem to America and do, in my judgment, require Federal intervention.

The President focused the Nation on the career criminal phenomenon in his recent speech to the International Association of Chiefs of Police, supported by empirical data that to a large extent is the work of some of today's witnesses. He observed that career criminals are "human predators" and that "nothing in nature is more cruel or more dangerous," and I believe the President is right.

The same essential theme has been sounded by the U.S. Attorney General on a number of occasions, as recently as Friday in this room when he testified about the Attorney General's Task Force on Violent Crime.

The experience I have had, both personally as a district attorney of a large American city and in association with other district attorneys, two very distinguished ones who will testify here today, has convinced me that a relatively hardcore few criminals commit a great proportion of serious and violent crimes, especially burglary and robbery category, which are at the center of street crime in this country today.

The figures are so alarming as to justify brief reference. Doctors Greenwood, Wellford and Ball are here to testify today and will elaborate on studies that have shown that some 49 robbery inmates in California prisons admitted having committed more than 10,000 crimes. Dr. Ball's famous study of 243 Baltimore heroin addicts found they had committed half a million crimes in an 11-year period.

Currently the criminal justice system of many States is simply not equipped to provide trial, conviction, and sentencing of career criminals. It is for this reason I have introduced S. 1688, which addresses itself to the problem of career criminals. It seeks to make it a Federal offense where a person having been twice convicted of robberies or burglaries is once again charged with a robbery or burglary with the use of a firearm, and calls for a sentence of life imprisonment, recognizing that once an individual gets to the stage of being a career criminal, it is necessary to separate that person from society in order, simply stated, to protect society.

[Text of the Career Criminal Life Sentence Act of 1981, S. 1688, and the texts of S. 1689 and S. 1690 follow:]

97TH CONGRESS
1ST SESSION

S. 1688

To combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 9), 1981

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Career Criminal Life Sentence Act of 1981".

SEC. 2. Chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2118. Career criminal life sentence

"(a) Whoever commits, conspires, or attempts to commit a robbery or a burglary in violation of the felony statutes of a State or of the United States while using, threatening to use, displaying or possessing a firearm, after having been twice convicted of a robbery or a burglary in violation of the felony statutes of a State or the United States is a career criminal and upon conviction shall be sentenced to imprisonment for life.

"(b) Notwithstanding any other provision of law, defendants charged under this section shall be admitted to bail pending trial or appeal only as provided in capital cases and the sentence shall not be suspended. It is the intent of Congress that such defendants—

"(1) be tried within sixty days; and

"(2) have any appeal decided within sixty days.

"(c) For purposes of this section—

"(1) 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States;

"(2) 'felony' means any offense punishable by imprisonment for a term exceeding one year.

"(d) No provision of this section shall operate to the exclusion of any other Federal, State, or local law, nor shall any provisions of this Act be construed to invalidate any other provision of Federal, State, or local law.".

SEC. 3. The table of sections for chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"2118. Career criminal life sentence.".

SEC. 4. It is the intent of Congress that in exercising its jurisdiction under this Act, the United States should ordinarily defer to State prosecution. However, if the Attorney General or a United States Attorney, in consultation with appropriate State or local officials, determines that there is a significant Federal interest in the case and the State authorities are unlikely to secure a sentence of imprisonment for life, then Federal prosecution may be brought.

II

97TH CONGRESS
1ST SESSION

S. 1689

To authorize incarceration in Federal prisons of convicts sentenced to life imprisonment under the habitual criminal statute of a State.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 9), 1981

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To authorize incarceration in Federal prisons of convicts sentenced to life imprisonment under the habitual criminal statute of a State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Congress finds that—

(1) career criminals commit a large percentage of the violent and major felonies afflicting society, causing immeasurable physical injury to innocent persons, and damage, destruction, or loss to their property estimated at billions of dollars annually, thereby terrorizing law-

abiding citizens, disrupting the community, and undermining respect for law;

(2) the continuing criminal activity of career criminals adversely affects interstate commerce;

(3) despite prior convictions for serious offenses, many repeat offenders are placed on probation or sentenced to unduly short terms of imprisonment by State judges, to the detriment of public safety;

(4) many repeat offenders cannot reasonably be rehabilitated and, unless incarcerated for life, will commit further felonies;

(5) many States have habitual criminal statutes providing for life sentences for repeat offenders, upon subsequent felony convictions;

(6) many State prison systems are severely overcrowded, understaffed, and unable to confine convicts sentenced to life imprisonment under such statutes in a safe, secure, and humane manner;

(7) State judges may be deterred by the lack of sufficient prison space, staff, and funding from imposing life sentences for repeat offenders as provided by State law, and the legislatures in those States without such habitual criminal statutes may be dissuaded by such considerations from enacting such statutes;

(8) the interests of justice and public safety would be served if State authorities felt free to impose life sentences for repeat major offenders unrestrained by such considerations;

(9) the Federal Bureau of Prisons sometimes has empty cells available and can make additional space available by consolidating inmates, consistent with suitable standards, and ultimately can open additional institutions and cells, without great cost or delay, in certain Federal facilities, including abandoned military facilities and Public Health Service Hospitals; and

(10) the Federal Bureau of Prisons has an outstanding record in safely, effectively, and humanely confining inmates sentenced to life imprisonment.

(b) The Congress declares that the purpose of this Act is to remove undue restraints on States imposing life sentences on repeat major offenders by authorizing the Federal Government to assume custody of prisoners sentenced under State habitual criminal statutes to imprisonment for life, without cost to the State.

SEC. 2. (a) Upon request by a State pursuant to section 3, the Federal Bureau of Prisons of the Department of Justice shall promptly arrange and accept custody of convicts who are sentenced to life imprisonment under the habitual criminal statutes of a State, to the extent that space is or can be made readily available in the Federal prison system. The Federal Bureau of Prisons shall confine such convicts until certification to the Attorney General by appropriate authorities of the State that the sentence of a transferred prisoner has been terminated by parole, pardon, or otherwise as provided by State law, or, absent such certification, for the natural life of the prisoner.

(b) This Act shall apply only to the incarceration of persons sentenced to imprisonment for life under the State habitual criminal statute after the date of enactment.

SEC. 3. (a) All applications for Federal incarceration under this Act shall be subject to approval by the Attorney General of the United States and shall include a certification by the State that the prisoner to be transferred has been sentenced to life imprisonment under a State habitual criminal statute.

(b) The Attorney General shall have the authority to review the nature and circumstances of the offenses committed by any prisoner who is proposed for transfer and the existing capacities of the State prison system from which transfer is sought. The Attorney General may reject any application for Federal incarceration based upon such considerations and upon the availability of space in the Federal prison system. The decisions of the Attorney General under this subsection shall not be subject to review by Federal or State courts.

II

97TH CONGRESS
1ST SESSION

S. 1690

To require States to assure that prisoners have a marketable job skill and basic literacy before releasing them on parole.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 9), 1981

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To require States to assure that prisoners have a marketable job skill and basic literacy before releasing them on parole.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the prison authority of a State shall have an obligation to provide prisoners with a marketable job skill and basic literacy, and the parole authority shall not release a prisoner sentenced under the law of the State to a term of two years or more prior to the expiration of his sentence unless the State has met such obligation.

(b) On or before one hundred and eighty days before the effective date of this Act, the Attorney General of the United States shall, after consultation with the State Prison Vocational Skills Advisory Council, promulgate such regulations as are necessary to carry out the purposes of this Act including a determination of what constitutes a "marketable job skill and basic literacy".

SEC. 2. (a) Notwithstanding any other provision of Federal law, any State desiring to receive any grant, contract, award, or other assistance paid for from Federal funds for use in its prison programs, shall certify to the Attorney General that it is in compliance with the provisions of this Act.

(b) Except as provided in subsection (c), any State which fails to comply with this Act shall be ineligible to receive any Federal funds for its prison programs until such time as the State can certify to the Attorney General that it is in compliance with the provisions of this Act.

(c)(1) If the Attorney General determines that a State has made a good faith effort to comply with the provisions of this Act, the Attorney General may grant such State probationary status for one year during which time the State shall be eligible for any Federal funds for prison programs, notwithstanding subsection (a).

(2) No State shall be eligible for probationary status under paragraph (1) for more than two years.

SEC. 3. (a) There is established the State Prison Vocational Skills Advisory Council (hereinafter in this Act referred to as the "Council") which shall advise the Attorney General of the United States regarding regulations necessary to carry out the provisions of this Act. The Council shall be composed of—

(1) the Associate Attorney General, who shall serve as its chairman;

(2) the Director of the Federal Bureau of Prisons;

(3) the Under Secretary of Labor; and

(4) six representatives from State and local prison systems, each from a different State, to be selected by the Attorney General.

(b) It shall be the duty of the Council to advise the Attorney General in formulating regulations as provided in section 1(b).

SEC. 4. Nothing in this Act shall be—

(1) construed to reflect the intent of Congress to invalidate or modify any State law except insofar as it may be directly inconsistent with this Act, or

(2) construed as creating any right in any State prisoner.

SEC. 5. This Act shall become effective one year after the date of the enactment of this Act.

Senator **Simpson**. We have a long list of distinguished witnesses and we will proceed at this time to the Honorable Lowell Jensen, Assistant Attorney General for the United States in the Criminal Division. Mr. Jensen comes to his position with extraordinary experience since 1955 as an assistant deputy and then district attorney of Alameda County, Calif.

We are pleased to welcome Mr. Jensen here today. His experience predates mine, but not by a whole lot. I joined the prosecutors office in 1959. He has a 4-year edge on me, and I am glad we came to Washington in the same year. I think working together we may be able to accomplish things on the problem of violent crime.

Welcome, Mr. Jensen. We are pleased to have you here and we are pleased to hear your testimony.

STATEMENT OF D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. **Jensen**. Thank you, Senator. It is a pleasure to be here and to address the issues of S. 1688 from the perspective of the Department of Justice. At the outset, however, I would preface my remarks by stating the Department of Justice supports your aim to deal more effectively with career criminals; however, time has not allowed the Office of Management and Budget to analyze all of the implication of this alteration in Federal jurisdiction or compare the impact of S. 1688 with the President's program. As a general matter, the administration opposes expansion of Federal jurisdiction. This area, however, is one where an exception may be made from that rule.

Also, a thorough analysis of the budgetary impact of this bill has not been completed and the administration would like to reserve the right to comment further on your bill after budget and other questions are fully analyzed.

As a result of those considerations, Mr. Chairman, I am not in a position today to offer direct support of the bill from the Department. The bill will be reviewed with reference to those aspects and its total posture from the Department's standpoint. However, I could offer some comments on the bill, and these comments, I think, would follow upon the comments of the Attorney General at the hearing last Friday.

As you have already stated, the concept of career criminal is addressed in this bill and I believe it is one of the only legislative bills to address that issue in Federal law. In local and State levels, career criminal legislation and career criminal activities by local prosecutors have now been a part of the scene for roughly the last decade.

It has been the experience at the local level that the ability to identify career criminals who carry out a completely disproportionate level of crime is a successful and effective way of dealing with the problems in the criminal justice system.

The Attorney General's Task Force on Violent Crime dealt with that issue and specifically recommends that the Federal system now take up and deal with the notion of career criminals. United States attorneys can construct on an administrative and executive level an approach to career criminals, but this bill is the only one that deals with that concept legislatively. So, as a concept, I can tell you the Department is certainly in agreement with your approach that there should be a legislative construct for career criminals.

There are some other issues within your bill that I think I could touch upon as far as concepts are concerned. There is an enhanced sentence structure in your bill that deals with career criminals. That is characteristic of State legislation in this area. Your bill deals with a sentence structure where a mandatory sentence is imposed for a career criminal. That also parallels local and State efforts, and conceptually the Department and the task force recommendations are consistent with those positions.

Your bill also deals with the issue of bail; it identifies this particular offender of repeat offenses and restricts bail considerations. That is consistent with the recommendations of the task force. Your bill also deals with a very important area that also is dealt with by the task force, and that is cooperative efforts by Federal and local and State prosecutors.

This bill contemplates an expanded jurisdiction in areas that would require that cooperation, and your bill deals with that in a fashion where such cooperation is contemplated by the bill. We conceptually believe that that is a proper approach also. That is a sensitive area, the area of expanded Federal jurisdiction, as I already mentioned, and one which would have to be thought through.

With those comments, then, conceptually as the bill deals with career criminals, as the bill deals with bail issues with enhanced sentence structures and cooperative efforts, I can offer the comments that they fit in conceptually with the Department's positions and the recommendations of the task force.

I would be happy to answer any other questions.

Senator SPECTER. Thank you very much, Mr. Jensen.

I can understand and do appreciate the fast track which this subcommittee is trying to put this bill on makes it difficult for the administratin to move through all of the decisionmaking processes because of the tremendous number of other problems the administration is facing at the moment. This bill was introduced October 1 and we are now at October 26, so it is a fast first hearing.

And it is understandable that the Office of Management and Budget and other facets of the administration would not have had an opportunity to resolve the issues to which you refer. As you know, I had conferred with you and others at the White House in order to set the stage, realizing that there are important considerations here which will take some time.

I believe that we are moving in the direction of enactment, moving in the direction of taking a significant step to solve the problem, and I am prepared to work through it as time is required for various components of the administration to have time to analyze the import of this bill.

I think the testimony you have provided here today so far and some elaborating questions and dialog between you and me may be helpful. The ground which you and I covered on Friday I think is worthy of inclusion here, and that relates to the level of priority of the repeat offender and the career criminal in connection with the issue of violent crime.

Contrasted with the other priorities which are necessarily present for the Department of Justice on a wide variety of subjects, my question to you is: Is there any priority which exceeds importance, the fight against violent crime in this country today other than the repeat robber and burglar who has committed four, six, eight, a dozen or a dozen and a half such felonies?

Mr. **Jensen**. I can say there is no other area of the criminal justice effort that exceeds that, that that is at least equal to any other thrust of the activities of the Department, and it is an area of equal priority in terms of its top rank.

The task force dealt with this in terms of looking at the issue of career criminals, and as we have already pointed out and you have mentioned, if you can identify in the system those persons disproportionately responsible for crime and deal with them in an effective way, you will have an impact which is appropriate within the system. So that identifying and dealing effectively with career criminals must rank at an equal level with the major priorities or the top priorities.

Senator **Specter**. Mr. Jensen, it is obviously difficult to quantify the number of career criminals there are in the country or to assess what percentage of robberies or burglaries are committed by career criminals, but will you be in a position to offer some judgment or ballpark estimate on those questions?

Mr. **Jensen**. The original studies that were done which led to the programs in various offices throughout the country, as I recall, the research effort was done by the INSLAW organization here in Washington.

Their research, it's my recollection, identified roughly 7 percent of the robbers as being responsible for 25 percent of the robberies actually committed, so you had that kind of disproportion that led to the notion that these were "career criminals'.

Senator **Specter**. And would you think it equally applicable that a relatively small number of career criminals in the burglary line commit a large number of the burglaries in this country?

Mr. **Jensen**. There are some other studies that suggest there are even higher figures in that area. We could provide you with some of those studies, but my recollection is that in the area of burglary you find an even greater pattern of one person being responsible for higher numbers of burglaries.

Senator **Specter**. Mr. Jensen, would you care to offer an opinion or a judgment as to why the criminal justice system is not able to deal effectively in terms of sentencing with those who have been convicted of multiple robberies and burglaries, some ranging into a dozen convictions without really long, tough sentences.

Mr. **Jensen**. I think you are dealing with a long-term kind of development of sentencing practices and the career criminal program itself fits into what I see as a long-term kind of development to move away from the so-called indeterminate sentence to determine sentence structures dealing with specific kinds of conduct.

If you go back into the pattern suggested before you might find a career criminal where all of the offenses were absorbed into one kind of sentence, where it was an indeterminate base and that would be something controlled by another governmental authority rather than the court structure itself.

What you have seen paralleling the notion of career criminals is also a notion that given conduct requires a given sentence and that you are now moving into an area where adequate sentences are being imposed on career criminals as a result of that kind of conceptual shift.

Senator SPECTER. Do you have any opinion why life sentences are not handed out more frequently under the habitual criminal statutes, which many of the States have at the present time?

Mr. JENSEN. I think they would have to range throughout the States. There was a pattern in California to back off from that and I think it paralleled the discussion I just went through with reference to perceptions of indeterminancy being a part of your sentence structure.

What has happened in California is, as you shift to a determinate sentence, you pick up the ability to impose long-term habitual sentences by the conduct itself rather than habitual criminal statutes, which have been indeterminate.

I think that the move here to impose a life term parallels that. In essence you are now enhancing the sentence structure and, as I indicated before, this is show at the threshold in terms of a mandatory sentence and increasing the exposure at the prison level, consistent with those kinds of movements within the system.

Senator SPECTER. So your conclusion is you would agree with the concept of enhancement of penalties for career criminals running up to the life sentence.

Mr. JENSEN. I do.

Senator SPECTER. What is your judgment as to the power of the Congress under the commerce clause to prohibit the commission of violent offenses with the use of firearms by convicted felons?

Mr. JENSEN. There is a review of that and our tentative conclusion is this is not a constitutional problem. Your proposed legislation would be constitutionally permissible.

There are some thoughts about that, and obviously, as we look into that, we would specifically look into that further and if we do arrive at a conclusion which is other than that, we would certainly bring it to your attention. But our tentative conclusion is this is essentially a policy issue rather than a constitutional issue.

If you look at present Federal law, the possession of a firearm by a convicted felon imposes Federal jurisdiction and that seems to be acceptable, so I would think that kind of argument could be made as to your legislation, that this is constitutionally permissible and the issue has to be one of the proper expansion of Federal jurisdiction.

Senator SPECTER. There have been constitutional tests on the current legislation, which imposes Federal jurisdiction on the commission of an offense with a firearm?

Mr. JENSEN. There are statutes imposing Federal jurisdiction on the possession of firearms, so you could make the argument.

Senator SPECTER. Have those been upheld?

Mr. JENSEN. To my knowledge, yes.

As I say, there are some questions about this area and we are engaging in further research as far as that aspect is concerned also, and, once again, we will come back to you about that conclusion.

Senator **Specter**. But, as you say, by analogy to the other statutes you have referred to, at your preliminary review, at least, this statute would be constitutional?

Mr. **Jensen**. That is correct.

Senator **Specter**. You have already touched upon, to some extent, the issue of coordination between Federal and local prosecutorial officials. With the provisions built into this statute about the Federal authorities deferring to State officials about retaining the power should the Federal prosecutor feel it is necessary to pursue the matter in the Federal court, do you believe that this will help the Federal-local coordination that you testified to earlier?

Mr. **Jensen**. As I indicated before, that is an area of review also. However, the Attorney General and the Task Force have made that a centerpiece of their efforts. The need to coordinate resources and to coordinate them in such a way that you get the best possible results out of the criminal justice system either at Federal or local levels is contemplated in this legislation.

So conceptually I think your legislation is consistent with the Task Force recommendations and with the general position of the Department. We would like to look at it very specifically as to whether or not we think this is the best construct for that, but as a concept, the way you approach it in terms of building in the necessary coordination, we think, is a good concept.

Senator **Specter**. Mr. Jensen, I think that pretty well covers the subject matter of the testimony.

I want to express to you my personal appreciation and the appreciation of the Judiciary Committee for your cooperation on this and other matters. We appreciate your availability to consult with us. We appreciate your being here today.

The testimony of the Attorney General was helpful on Friday and he expressed agreement in principle with the thrust of this statute and we look forward to working with you on a followup basis to move this matter along.

Mr. **Jensen**. We will be happy to do so, Senator.

[The prepared statement of Mr. Jensen follows:]

PREPARED STATEMENT OF D. LOWELL JENSEN

Mr. Chairman, I am pleased for the opportunity to appear before the Subcommittee to discuss S. 1688, the proposed Career Criminal Life Sentence Act of 1981.

As you know, S. 1688 would make it a federal crime to use, threaten to use, display, or possess a firearm during the commission or attempted commission of a robbery or burglary felony offense if the accused has been convicted of two prior robbery or burglary felony offenses. Upon conviction, a defendant would be characterized as a "career criminal", and sentenced to imprisonment for life. The bill further provides that a defendant charged with such an offense shall be admitted to bail only as provided in capital cases, and that the sentence shall not be suspended. In addition, the bill contains an expression of Congressional intent that a person charged under the proposed Act be tried within sixty days, and that any appeal be decided within sixty days. There is a further expression of Congressional intent that the exercise of federal jurisdiction be limited to those situations in which there is a significant federal interest and where State authorities are unlikely to secure a sentence of imprisonment for life.

The Department of Justice is committed to doing a more effective job of combatting violent crime in the nation. This legislative proposal clearly is intended to assist the national effort to combat the rising incidence of violent crime. It recognizes the need to deal swiftly and effectively with those offenders who habitually prey upon the property and safety of innocent victims, and it recognizes the impact which unchecked violent crime has upon the social and economic fabric of the entire nation.

It is our view that S. 1688 provides an effective tool for combatting violent crime by focusing on the critical problem of the repeat offender who uses a firearm in the commission of yet another violent offense. The provisions of S. 1688 are directed at those recidivists who have already been convicted of two felony offenses and who by their use of a firearm in the commission of a third violent offense have demonstrated their incorrigibility and continuing danger to our society . Conviction under S 1688 would appropriately provide for a mandatory life sentence for such career criminals.

With respect to the sentencing provisions of S. 1688, we support the concept of enhanced penalties for career criminals. Substantial periods of incarceration for persons who have demonstrated repeatedly that they are a violent threat is one way of ensuring the safety of our communities. Furthermore, such a penalty provision sharply curtails the latitude of judicial discretion in sentencing repeat violent offenders. The effectiveness of the sentencing provision is underscored by the bill's prohibition against suspended sentences for career criminals. The sentencing provision is consistent with the mandatory sentence recommendations of the Attorney General's Task Force on Violent Crime.

Preliminary review of this proposal suggests that the bill does not entail significant problems with respect to constitutional authority. Although the Tenth Amendment reserves to the States those powers not delegated to the United States by the Constitution, we believe that Congress has the power, under the Commerce Clause, to prohibit the commission of violent offenses with the use of firearms by convicted felons; and indeed, Congress has enacted similar statutes which have withstood constitutional attack. See

18 U.S.C. App. 1201, 1202. See also 18 U.S.C. 1951. Robberies and burglaries of homes, stores, businesses, and travelers directly interfere with interstate commerce by impeding the free flow of goods and people, and by affecting insurance rates, real estate values, and the general cost of operating businesses, among other things.

As we have emphasized repeatedly the Department of Justice is committed to doing a more effective job of combatting violent crime. One significant way of improving the attack on crime is by facilitating coordination and cooperation among local, State, and federal law enforcement efforts. The importance of this joint federal-local effort was emphasized in the final report of the Attorney General's Task Force on Violent Crime in a number of recommendations. In particular, the Task Force recommended increased cross-designation of federal and state and/or local prosecutors (recommendation 7), and the establishment of law enforcement coordinating committees (recommendation 6). Moreover, the Task Force recommended (recommendation 21) the development of agreements between United States Attorneys and State and local prosecutors to provide for increased federal prosecutions of convicted felons apprehended in possession of a firearm.

The purposes and operation of S. 1688 are consistent with these Task Force recommendations. Specifically, S. 1688 recognizes the importance of federal-local law enforcement coordination as well as the principal role State law enforcement authorities traditionally have played in the area of violent crime. We are sensitive to the issues of federalism inherent in this bill, and we do not view this proposal as an invitation to intrude into those areas of law enforcement which State and local authorities have traditionally handled. S. 1688 expresses the intent that ordinarily the federal prosecutor should defer to State prosecution; however, in cases where it is determined after consultation between federal and local prosecutors that there is a significant federal interest and that local authorities are unlikely to secure a life sentence for a career criminal, then federal prosecution under this bill may be brought. It is our position that this type of consultation and cooperation between federal and state prosecutors will enhance the overall effectiveness of prosecutions of dangerous criminals and will ensure that repeat violent offenders will get the attention they need.

In addition, it is the intent of S. 1688 to bring repeat offenders to trial under this bill within sixty days and in the event of conviction to obtain an appellate decision within another sixty days. This is consistent with the need to ensure speedy resolution of criminal prosecutions and the finality of results. Lengthy delays in trial coupled with an interminable appeal process undercut the effectiveness of any law enforcement program. We support the bill's intention of dealing with violent habitual criminals in a speedy and resolute manner and believe that such action can have a positive deterent effect. Finally, we support the bill's restricted bail provision which applies the standards of capital cases. This is consistent with the Task Force recommendation thirty-eight and recognizes the reality that career criminals too often commit additional violent crimes while on release pending trial.

In sum we believe that S. 1688 addresses the serious problem of repeat offenders, provides for the necessary cooperation between federal and local law enforcement authorities to ensure that the prosecution of career criminals is handled effectively and swiftly, and ensures that those career criminals who use a firearm to commit a violent offense receive the necessary punishment to provide for the safety of our communities.

For the foregoing reasons, we support the enactment of this legislation.

Mr. Chairman, that completes my statement. I would be pleased to try to answer any questions you may have.

Senator SPECTER. Thank you very much.

Our next witness is going to be the Honorable William Cahalan, who, like Lowell Jensen and Arnold Specter, spent much of his adult life as a prosecuting attorney. I have known Bill Cahalan for the better part of two decades. I have known him when he was the prosecuting attorney of Wayne County, Mich. He has had a very distinguished career, receiving his bachelor's and doctorate of law from the University of Detroit.

He spent 5 years as an assistant district attorney in Wayne County, from 1952 to 1957 and then, after private practice, returned as the prosecuting attorney of Wayne County, Mich., which includes Detroit, since 1967, which gives him a very extensive experience base on the prosecution of violent crime in a major American city.

He is a member of the Michigan Crime Commission as well as, a member of the board of directors of the National District Attorneys' Association.

Bill Cahalan, welcome to these hearings. It's a delight to see you again.

STATEMENT OF WILLIAM CAHALAN, PROSECUTING ATTORNEY, WAYNE COUNTY, MICH.

Mr. CAHALAN. It's good to see you here. It's good to have a voice in the Senate.

Senator SPECTER. A voice which you have helped influence through a number of seminars, meetings, and other contacts over the course of many years.

Mr. CAHALAN. My testimony will probably not be as brief as Lowell Jensen's but I hope it is a little more supportive.

This is a first hearing. I was asked to come down here recently. I had only 1 day to prepare my statement, but this is an area near and dear to my heart and so I did it.

I recall it was 1967 I was down here testifying, I think, before this same committee on handgun control and that we haven't been able to do—control handguns—so this is a step in the right direction, to control the use of handguns by felons.

So it's my understanding this proposed legislation will do two things. It will sort of have a felony firearm statute and a career criminal statute. So it will incorporate two really good ideas that we have had in Michigan for some time and this committee and the Senate should be commended for attempting to do something about the felonious use of handguns by career criminals.

As you mentioned, there will be some who argue the Constitution does not give the Federal Government police power and, therefore, it should not be concerned with law enforcement, that that rightly belongs to the States. But I disagree with that because we can say to those critics that when crime and the fear of crime are destroying the quality of life all across America and crime knows no State boundaries and crime is emptying our cities, it is right for the U.S. Senate to address itself to this national problem.

And we talk about the prisons, but the fear of crime is making all of us a part of the greatest prison population in history. In Detroit we have self-made prisons. We place bars on our windows. We double-lock our doors. We have alarm systems throughout our homes. We put guard dogs outside our entrances. Today more and more people are arming themselves. Today more and more criminals use handguns in the commission of crimes.

The reason for both is our criminal justice system. The law-abiding have no confidence that the criminal justice system will work and protect them. The lawless have confidence that the criminal justice system will not work and they will go unpunished. And volumes have been written and spoken about gun control.

The best way to achieve gun control is to instill confidence in the law-abiding and instill fear in the lawless that the criminal justice system does work. As we all well know, the history of gun control shows that it is an emotional issue and there is little ground for compromise between those who advocate gun control and those who insist upon the rights of individuals to arm themselves.

I think this proposed legislation is a compromise. Those who are the most committed opponents of gun control argue guns don't kill people; people kill people. Well, I suppose there is some truth in that. What maybe we should do is control those people who manifest a disposition that they are the type who might kill people with a handgun, and I think this proposed legislation does that.

It was this philosophy that led the citizens of the State of Michigan, both the advocates and opponents of gun control, to obtain legislation providing that any person convicted of possession of a firearm during the commission of a felony shall be sentenced to at least 2 years in prison and these 2 years to be served in addition to any time served for the underlying felony.

This law went into effect on January 1, 1977. Initially it had considerable impact. It was highly publicized that it would be strictly, certainly, and uniformly enforced. The number of crimes committed with guns decreased significantly in the first 2 years that it was in effect and attached to my testimony there are some charts. I will not go into them at this time.

The Wayne County Prosecutor's Office adopted the policy that when the facts were there the defendant would be charged with a violation of this law and there would be no plea bargaining. This policy has been faithfully observed.

Unfortunately, the will of the people, expressed through the legislature, was thwarted by the judiciary. First, a large number of trial judges found the law to be unconstitutional. Judicial reaction to any interference with their unfettered sentencing discretion was not corrected until June 25, 1979, when the Michigan Supreme Court determined that the law is in fact constitutional.

Senator SPECTER. Mr. Cahalan, what was the basis for the determination of unconstitutionality by the lower court judges?

Mr. CAHALAN. Double jeopardy.

Senator SPECTER. How did that rationale spell out?

Mr. CAHALAN. I am pleased we could get the Michigan Supreme Court to go along with us, but that is no mean feat, you know. You are trying them twice for the same crime. If you charge the person with robbery-armed, you are charging him with robbery being armed. And then, if you go ahead and charge him with having a gun in his possession while committing this robbery-armed, that's double jeopardy and our Michigan Supreme Court said no. But it was not a unanimous decision. There were three justices dissenting.

But perhaps even worse is that even after it was declared constitutional the judges refused to find defendants guilty of the crime, even though the evidence was overwhelming, because this would obviate the necessity of sending that person to jail.

I will refer to the chart here because it is simple and, I think, meaningful. I have attached to the back here chart 2, "All Felonies in Wayne County." Of all the felonies in Wayne County, 18 percent go to trial. Of those tried by the court 64 percent are found guilty. That's all felonies.

With the felony-firearm, as I mentioned, 18 percent of all felonies go to trial. Felony-firearms, 57 percent go to trial and it's easy to see why, because whereas all felonies there is a 64-percent conviction rate in bench trials, for a bench trial for felony-firearm there's only a 13-percent conviction rate and 66 percent of the time when they find the person not guilty of the felony-firearm, they find him guilty of the underlying felony.

Senator SPECTER. In those cases, Mr. Cahalan, where they find the defendant guilty of the underlying felony, do they not impose sentences so that had they found the defendant guilty of the offense which carries a mandatory sentence they avoid the requirement of sending him to jail at all?

Mr. CAHALAN. That's true. That's the reason they would do it. If they were going to send him to jail they could find him guilty of the felony-firearm, because it would perhaps not enhance the sentence they would impose.

If a person was found guilty of, say, robbery-armed, which calls in Michigan for at least 1 year, and the judge was predisposed to give that person 3 years for that felony, he could easily find him guilty of the felony-firearm, which would mean that he would have to send him away for 2 years and then give him another year for the robbery-armed and he would be accomplishing his purpose.

But in those cases where they don't want to send them to jail at all, the only thing they can do is find them not guilty.

Senator SPECTER. Do many of the cases you cite here involve career criminals, repeat offenders who have been convicted of multiple previous robberies or burglaries?

Mr. CAHALAN. No, not necessarily. Usually those we have a special unit to prosecute and we are there at the time of sentencing and we insist that they get time, and we argue more strenuously for them.

But in this particular case, this is an attempt to control the felonious use of handguns. It worked for the first 2 years. Robberies with handguns decreased considerably in the first 2 years, but after the first 2 years, the word got out they would not get the time. And we are talking about sentencing.

You were dicussing it with Lowell Jensen there and I would just like to quote from James Q. Wilson's book, "Thinking About Crime," which is the best book written on crime, I think, and he says

> What is remarkable is that so few knowledgeable persons—

He is talking about the certainty of punishment, not severity but to give punishment when a crime is committed—

> What is remarkable is that so few knowledgeable persons, especially among the ranks of many professional students of crime, are even willing to entertain the possibility that penalities made a difference.
>
> We have become so preoccupied with dealing with the causes of crime that we have almost succeeded in persuading ourselves that criminals are radially different from ordinary people, that they are utterly indifferent to the costs and rewards of their activities and are responding only to deep passions, fleeting impulses, or uncontrollable social forces.
>
> There is scarcely any evidence to support the proposition that would-be criminals are indifferent to the risks associated with a proposed course of action.

And I think that has been our trouble all along, that we treat criminals as if they are automatons and just respond without thought, that they are not really human. They don't have the same nature as we.

Senator SPECTER. Mr. Cahalan, I know Detroit has enjoyed a reduction in its crime rate while the Nation as a whole has sustained an increase in crime. You refer to your own Repeat Offender Bureau.

Mr. CAHALAN. Yes.

Senator SPECTER. To what extent do you think your Repeat Offender Bureau has caused the decrease of crime in Detroit?

Mr. CAHALAN. I think it's significant. That's one of the other good things about this legislation you propose. It will be putting a career criminal unit in all the Federal attorneys' offices throughout the country and, as has been testified and as you know, very few people commit a disproportionate amount of crime and we established this career criminal division in 1975 with the aid of Federal funds.

And as you, being an ex-prosecutor, know, this has enabled us not to have production line justice, to have sort of tailor-made justice here where the case would be assigned to an assistant from the time it came into the office until its conclusion, which, of course, with the lack of resources ordinarily you cannot do.

Since 1975 that unit has put 2,000 hardcore criminals behind bars for an average minimum sentence of 10 years. It is reasonable to conclude on a conservative estimate that each would be responsible for 10 potential felonies per year. And if you figure that out, it would conclude that this unit has prevented 120,000 felonies over a 5-year period and I say this is conservative in light of some of the defendants who are convicted.

Here is a sample: One, 65 robberies in 3 months; another, 200 burglaries in 1 year; another, 125 rapes in 2½ years; another, 14 murders.

Senator SPECTER. You say the high number there is 20 burglaries?

Mr. CAHALAN. 200 burglaries in 1 year.

Senator SPECTER. Was he convicted of 200 burglaries?

Mr. CAHALAN. No, he was convicted of a sufficient number to get him under the habitual statute, so he is away now for a long period of time. You have to convict him of four.

Senator SPECTER. To make him eligible for sentencing under the habitual criminal statute?

Mr. CAHALAN. Right.

Senator SPECTER. What was the evidentiary basis for your conclusion that he had committed 200 burglaries?

Mr. CAHALAN. The police checked with him and he knew enough about the 200 burglaries that they concluded he committed them, because he could name—he was a bright person.

Senator SPECTER. He confessed to them and there was sufficient corroborating circumstances that it was an appropriate conclusion that he had in fact committed them?

Mr. CAHALAN. Yes. He had knowledge that he only could have had about those burglaries if he had committed them himself that the police knew about.

Senator SPECTER. Would you repeat those statistics on the robbery?

Mr. CAHALAN. Sixty-five robberies in 3 months. These are just some of the examples and, as you point out, since 1975, when this unit went into effect, crime nationally increased substantially, but in Detroit, part I crime decreased substantially.

And that is true of all of those major jurisdictions that have a career criminal unit, and there are several. And there is a lot of data available regarding these other jurisdictions because there was a lot of data kept by the LEAA because they were really concerned about this. But, unfortunately, the funding for this unit has been cut in half by our local authorities.

So I say the enactment of this proposed legislation is the second-best thing the Congress can do.

Senator SPECTER. How many assistant prosecutors do you have in your career criminal unit?

Mr. CAHALAN. We had 11; we now have 7.

Senator SPECTER. What is the total size of your office?

Mr. CAHALAN. 125 attorneys, and the best thing Congress could do is give some money to the local prosecutors, because we now know what to do.

When LEAA first came into effect we really didn't know what to do with the money, but now we have demonstrated there are programs we know work and I know that this plea for money will fall on deaf ears. But I think if we keep asking for it perhaps it will get through.

In the meantime, I recommend the passage of this legislation because it will assist us. The Deputy Attorney General commented upon the cost and in assurable cost for the Federal Government to undertake this program, but in the words of James Reston, less costly than the billons of dollars and thousands of lives now hostage to crime in our country.

Chief Justice Burger said recently, this is as much a part of our national defense as the Pentagon's budget, and I believe that. Our cities are emptying now not because of any threat by a foreign power.

So I urge the adoption of this and I look forward to the day when we can cooperate with the Federal District Attorney, Lynn Gilman, in the city of Detroit and make Detroit the kind of city we want it to be.

And we will have that kind of cooperation in Detroit because the U.S. attorney and I just met recently about cooperating with one another. He is a former assistant prosecuting attorney and is well trained.

Senator **Specter**. How much has crime been reduced in Detroit, Mr. Cahalan, or Wayne County? You say a significant percentage. Do you have an exact figure handy?

Mr. **Cahalan**. Yes. In the last, since 1975 it has been reduced by 28 percent, whereas nationally it has gone up about 18 percent.

Senator **Specter**. That is very impressive.

Mr. **Cahalan**. Yes. We were doing fine up until last year. I don't know what happened last year, but crime nationally increased 10 percent; in Detroit it increased 13 percent.

Senator **Specter**. You had a lower base. You beat it down over all those years.

Mr. **Cahalan**. I'm glad you thought of that. I didn't think of that when I was being queried by the press.

Senator **Specter**. I am very interested in your observation, Mr. Cahalan, about your willingness to share the prosecutorial responsibility with the U.S. attorney on career criminals.

Would you have any sense as to how other district attorneys across the Nation would feel about this legislation from this point of view?

Mr. **Cahalan**. I think they would be most willing in the major cities to share this burden.

Senator **Specter**. There are enough career criminals to go around?

Mr. **Cahalan**. Yes, there are enough to go around.

There used to be a lot of jealousies, as you know, but I think that has gone by the wayside. There certainly isn't any in the Detroit metropolitan area between the Federal prosecutors and the local prosecutors.

Senator **Specter**. Whatever differences and competition there may be I would agree with you that it does not extend to career criminals, because there is an attitude shared by both the Federal and State prosecutors about the terrible cost of the career criminal.

Mr. **Cahalan**. I think we finally came up with one way we can make the system work, and one of the ways we can make it work is to use the career criminals idea. It works and, as you know, very few prosecutors' offices have the luxury of having tailormade prosecution.

It is usually assembly line justice, as you know, with one assistant prosecutor handling one function and another another function. The case may be handled, before its conclusion, by five, six, or seven different prosecutors, which is necessary and in most cases is effective.

But when it comes to the career criminal it's not effective.

Senator **Specter**. Mr. Cahalan, do you have an opinion how many career criminals there are in the Detroit metropolitan area, or Wayne County, and defining a career criminal as someone who has committed many robberies or burglaries?

Mr. **Cahalan**. No, I do not.

Senator **Specter**. In incarcerating 2,000 it seems to me you have taken out of circulation a very significant portion of them for one county.

Mr. **Cahalan**. I'm sure, without a doubt, there are 2,000 more out there.

Senator **Specter**. Do you have any sense of how many of the robberies and burglaries in Wayne County are being committed by the relatively hard-core career criminals?

Mr. **Cahalan**. Just this statistic. We haven't done it in Detroit, but the statistics nationally—not nationally but in other jurisdictions where a study by LEAA showed that in Washington, D.C., 7 percent committed 25 percent of the cases—not just burglaries and robberies.

The New York Times did one in New York and said that 6 percent of the defendants are responsible for 67 percent of the violent crimes. And I think those figures would hold true, of course, for the city of Detroit.

When a person does commit a robbery, robbers and burglars are career criminals. By the time you get up to the point when you can hold up someone you have sort of dedicated yourself to a life of crime.

[The prepared statement of Mr. Cahalan follows:]

PREPARD STATEMENT OF WILLIAM L. CAHALAN

IT IS MY UNDERSTANDING THAT THE PROPOSED LEGISLATION WILL MAKE IT A FEDERAL CRIME FOR A PERSON WITH TWO PRIOR FELONY CONVICTIONS TO USE A FIREARM IN THE COMMISSION OF A FELONY. THIS LEGISLATION WILL INCORPORATE TWO EXCELLENT IDEAS — THE MICHIGAN FELONY FIREARM LAW AND THE CAREER CRIMINAL PROGRAM. THIS COMMITTEE AND THE SENATE SHOULD BE COMMENDED FOR ATTEMPTING TO DO SOMETHING ABOUT THE FELONIOUS USE OF HANDGUNS BY CAREER CRIMINALS.

THERE ARE SOME WHO WOULD ARGUE THAT THE CONSTITUTION DOES NOT GIVE THE FEDERAL GOVERNMENT POLICE POWER AND THEREFORE IT SHOULD NOT BE CONCERNED WITH LAW ENFORCEMENT THAT RIGHTLY BELONGS TO THE STATES. TO THOSE CRITICS WE CAN TRUTHFULLY SAY THAT WHEN CRIME AND THE FEAR OF CRIME IS DESTROYING THE QUALITY OF LIFE ALL ACROSS AMERICA, WHEN CRIME KNOWS NO STATE BOUNDARIES, WHEN OUR CITIES ARE BEING EMPTIED OF THEIR PEOPLE, THEN IT IS MOST ASSUREDLY RIGHT AND PROPER FOR THE UNITED STATES SENATE TO ADDRESS ITSELF TO THIS NATIONAL PROBLEM.

CRIME AND THE FEAR OF CRIME HAVE BEEN AND STILL ARE THE GREAT CONCERNS IN AMERICA, PARTICULARLY IN LARGE CITIES. AND THEY ARE VALID CONCERNS. IN FACT, THE FEAR OF CRIME IS MAKING ALL OF US PART OF THE GREATEST PRISON POPULATION IN HISTORY — SELF-MADE PRISONS FORMED WHEN WE PLACE BARS ON OUR WINDOWS, DOUBLE LOCKS ON OUR DOORS, ALARM SYSTEMS THROUGHOUT OUR HOMES AND GUARD DOGS OUTSIDE OUR ENTRANCES. THIS FEAR, IF ALLOWED TO GO UNCHECKED, WILL EMPTY THE CITIES, DESTROY THE AMERICAN SENSE OF FRIENDLINESS AND COMMUNITY AND LEAD TO VIGILANTES. TODAY MORE AND MORE PEOPLE ARE ARMING THEMSELVES. TODAY MORE AND MORE CRIMINALS USE HANDGUNS IN THE COMMISSION OF CRIMES. THE REASON FOR BOTH IS OUR CRIMINAL JUSTICE SYSTEM. THE LAW ABIDING

HAVE NO CONFIDENCE THAT THE CRIMINAL JUSTICE SYSTEM WILL PROTECT THEM. THE LAWLESS HAVE CONFIDENCE THAT THE CRIMINAL JUSTICE SYSTEM DOES NOT WORK AND THEY WILL GO UNPUNISHED. VOLUMES HAVE BEEN WRITTEN AND SPOKEN ABOUT GUN CONTROL. THE BEST WAY TO ACHIEVE GUN CONTROL IS TO INSTILL CONFIDENCE IN THE LAW ABIDING AND FEAR IN THE LAWLESS THAT THE SYSTEM WORKS.

THE HISTORY OF GUN CONTROL CLEARLY SHOWS THAT THIS IS AN EMOTIONAL ISSUE WHERE THERE IS LITTLE GROUND FOR COMPROMISE BETWEEN THOSE WHO ADVOCATE GUN CONTROL AND THOSE WHO ADVOCATE THE RIGHT OF THE PEOPLE TO ARM THEMSELVES. PERHAPS THIS PROPOSED LEGISLATION WILL GIVE US AN AREA OF COMPROMISE. THE MOST COMMITTED OPPONENTS OF GUN CONTROL ARGUE THAT GUNS DON'T KILL PEOPLE, PEOPLE KILL PEOPLE. THERE IS SOME TRUTH IN THAT. MAYBE WHAT WE SHOULD DO IS CONTROL THOSE PEOPLE WHO MANIFEST A DISPOSITION THAT THEY ARE THE TYPE WHO MIGHT KILL PEOPLE WITH A HANDGUN.

IT WAS THIS PHILOSOPHY THAT LED THE CITIZENS OF THE STATE OF MICHIGAN, BOTH THE ADVOCATES AND OPPONENTS OF GUN CONTROL, TO OBTAIN LEGISLATION PROVIDING THAT ANY PERSON CONVICTED OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A FELONY SHALL BE SENTENCED TO AT LEAST TWO YEARS IN PRISON. THIS TWO YEARS WOULD BE SERVED IN ADDITION TO ANY TIME SERVED FOR THE SENTENCE IMPOSED FOR THE UNDERLYING FELONY. THIS LAW WENT INTO EFFECT ON JANUARY 1, 1977. INITIALLY, IT HAD CONSIDERABLE IMPACT. IT WAS HIGHLY PUBLICIZED THAT IT WOULD BE STRICTLY, CERTAINLY, AND UNIFORMLY ENFORCED. THE NUMBER OF CRIMES COMMITTED WITH A GUN DECREASED SIGNIFICANTLY IN THE FIRST YEAR IT WAS IN FORCE (CHART I).

THE WAYNE COUNTY PROSECUTOR'S OFFICE ADOPTED THE POLICY THAT WHEN THE FACTS WERE THERE, THE DEFENDANT WOULD BE CHARGED

WITH A VIOLATION OF THIS FELONY FIREARM LAW AND THERE WOULD BE NO PLEA BARGAINING. THIS POLICY HAS BEEN FAITHFULLY OBSERVED.

UNFORTUNATELY, THE WILL OF THE PEOPLE EXPRESSED THROUGH THE LEGISLATURE WAS THWARTED BY THE JUDICIARY. FIRST, A LARGE NUMBER OF TRIAL JUDGES FOUND THE LAW TO BE UNCONSTITUTIONAL. THIS JUDICIAL REACTION TO ANY INTERFERENCE WITH UNFETTERED SENTENCING DISCRETION WAS NOT CORRECTED UNTIL JUNE 25, 1979, WHEN OUR SUPREME COURT IN A CASE ENTITLED WAYNE COUNTY PROSECUTOR V RECORDER'S COURT JUDGE, 406 Mich 374, DETERMINED THAT THE LAW WAS CONSTITUTIONAL.

SECOND, BOTH BEFORE AND AFTER THAT DATE, THE JUDGES OFTEN REFUSED TO FIND DEFENDANTS GUILTY OF THE CRIME EVEN THOUGH THE EVIDENCE WAS OVERWHELMING (CHART II) THUS OBVIATING THE NECESSITY TO SEND THE PERSON TO JAIL FOR TWO YEARS. THERE WAS NOTHING THE PROSECUTOR'S OFFICE COULD DO ABOUT THIS.

THIS ATTITUDE OF THE JUDICIARY HAS WEAKENED THE EFFECTS OF THE LAW (CHART I).

THERE MUST BE A WAY THAT WE CAN ENACT LAWS EITHER ON A STATE OR NATIONAL LEVEL PROVIDING FOR MANDATORY MINIMUM SENTENCES FOR THE USE OF HANDGUNS IN THE COMMISSION OF A FELONY THAT WILL BE ENFORCED BY THE POLICE, THE PROSECUTORS AND THE COURT. IF THIS IS DONE, WE WILL REDUCE THE USE OF HANDGUNS IN THE COMMISSION OF CRIME. PERHAPS THIS IS THE LEGISLATION THAT WILL DO IT.

THE ADDITIONAL PROVISION IN YOUR PROPOSED LEGISLATION THAT THE SO-CALLED FELONY FIREARM LAW SHALL APPLY TO THOSE WHO ARE REPEAT OFFENDERS, WILL ESTABLISH IN THE FEDERAL DISTRICT ATTORNEYS' OFFICES THROUGHOUT THE COUNTRY WHAT WOULD BE

TANTAMOUNT TO A CAREER CRIMINAL OFFICE SIMILAR TO THOSE IN OPERATION IN THE PROSECUTORS OFFICES IN SEVERAL MAJOR CITIES. DETROIT IS SUCH A CITY.

WHILE IT IS TRUE THAT THERE IS A CRIME WAVE IN THE UNITED STATES, IT IS NOT NECESSARILY TRUE THAT THERE IS A COMMENSURATE WAVE OF CRIMINALS IN THE UNITED STATES. IT WOULD APPEAR THAT A SMALL NUMBER OF CRIMINALS ACCOUNT FOR A DISPROPORTIONATELY LARGE AMOUNT OF CRIME.

A STUDY FUNDED BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION FOUND THAT IN WASHINGTON, D.C., SEVEN PER CENT OF THE DEFENDANTS WERE RESPONSIBLE FOR 25 PER CENT OF THE CASES. A STUDY BY THE NEW YORK TIMES FOUND THAT IN NEW YORK, SIX PER CENT OF THE DEFENDANTS WERE RESPONSIBLE FOR 67 PER CENT OF THE VIOLENT CRIMES.

THE WAYNE COUNTY PROSECUTOR'S OFFICE, LIKE MOST MAJOR METROPOLITAN OFFICES, DID NOT HAVE THE RESOURCES TO EFFECTIVELY PROSECUTE THESE ONE MAN CRIME WAVES. BECAUSE OF THIS LACK OF RESOURCES WE HAD TO ENGAGE IN WHAT WE EUPHEMISTICALLY CALL HORIZONTAL PROSECUTION, BUT WHICH MAY MORE ACCURATELY BE CALLED ASSEMBLY LINE PROSECUTION — AT EACH STAGE OF THE PROCEEDINGS THE CASE IS HANDLED BY A DIFFERENT ASSISTANT PROSECUTOR.

WITH THE ASSISTANCE OF THE FEDERAL GOVERNMENT, WE ESTABLISHED IN OUR OFFICE A CAREER CRIMINAL UNIT IN 1975. THIS UNIT CONSISTED OF 11 ASSISTANT PROSECUTING ATTORNEYS AND TWO INVESTIGATORS. TO THIS UNIT WERE ASSIGNED THOSE CASES INVOLVING DEFENDANTS WHO REALLY WERE ONE MAN CRIME WAVES. THIS ALLOWED A SMALLER CASE LOAD PER ASSISTANT PROSECUTOR AND VERTICAL

PROSECUTION — THAT IS, ONE ASSISTANT PROSECUTOR WAS RESPONSIBLE FOR EACH CASE FROM THE BEGINNING TO THE CONCLUSION. THIS HAS BEEN ONE OF THE MOST SUCCESSFUL UNITS OF THIS OFFICE.

THIS UNIT HAS CONVICTED OVER 2,000 HARD CORE CRIMINALS. THE AVERAGE MINIMUM SENTENCE WAS 10 YEARS. IT IS REASONABLE TO CONCLUDE THAT ON A CONSERVATIVE ESTIMATE EACH WOULD BE RESPONSIBLE FOR 20 POTENTIAL FELONIES PER YEAR. IT IS ALSO REASONABLE, THEREFORE, TO CONCLUDE THAT THIS UNIT HAS PREVENTED 120,000 FELONIES OVER A FIVE YEAR PERIOD.

I SAY THAT THIS IS A CONSERVATIVE ESTIMATE IN LIGHT OF SOME OF THE DEFENDANTS WHO WERE CONVICTED. A SAMPLE OF THEIR ACTIVITIES — 65 ROBBERIES IN THREE MONTHS, 200 BURGLARIES IN ONE YEAR, 125 RAPES IN 2-1/2 YEARS BY A MAN NOW DOING TWO LIFE TERMS, 14 MURDERS BY A MAN NOW DOING THREE LIFE TERMS.

UNFORTUNATELY, THE FUNDING FOR THIS UNIT HAS BEEN CUT IN HALF BY LOCAL AUTHORITIES.

THE ENACTMENT OF THIS PROPOSED LEGISLATION THAT WE ARE DISCUSSING HERE TODAY IS THE SECOND BEST THING THAT CONGRESS CAN DO IN THIS AREA.

THE BEST THING WOULD BE TO APPROPRIATE FUNDS FOR THOSE PROSECUTING ATTORNEYS OFFICES THROUGHOUT THE COUNTRY WHO HAVE DEMONSTRATED THAT THEY KNOW WHAT PROGRAMS WORK. LAW ENFORCEMENT IN THE DETROIT METROPOLITAN AREA COULD BE GREATLY ENHANCED IF WE HAD MORE MONEY TO MORE EFFECTIVELY ENFORCE THE FELONY FIREARM LAW AND MORE MONEY FOR OUR CAREER CRIMINAL UNIT. I REALIZE THAT THIS PLEA FOR FUNDS MAY BE FALLING ON DEAF EARS, BUT I AM GOING TO KEEP TRYING. PERHAPS IF I, AND OTHER

PROSECUTORS, SHOUT LOUD ENOUGH OR MAKE ENOUGH NOISE, WE WILL BE HEARD.

IN THE MEANTIME I THINK ITS JUST AND RIGHT THAT THE FEDERAL GOVERNMENT ENACT THE PROPOSED LEGISLATION. CRIME SHOULD BE OF PARAMOUNT CONCERN TO THE FEDERAL GOVERNMENT. THE QUALITY OF LIFE IN OUR MAJOR CITIES IN THE UNITED STATES HAS DETERORIATED BADLY. WHEN CRIME CONTINUES TO GROW UNCHECKED, NOT ONLY WILL OUR MAJOR CITIES BE AFFECTED, BUT OUR TOTAL COUNTRY WILL. OUR NATION HAS MORE TO FEAR FROM DOMESTIC DANGERS THAN IT DOES FROM FOREIGN POWERS.

CERTAINLY IT WILL BE COSTLY FOR THE FEDERAL GOVERNMENT TO UNDERTAKE THIS PROGRAM BUT, IN THE WORDS OF JAMES RESTON, LESS COSTLY THAN THE BILLIONS OF DOLLARS AND THOUSANDS OF LIVES NOW HOSTAGE TO CRIME IN THIS COUNTRY. AS JUSTICE BURGER RECENTLY SAID, "THIS IS AS MUCH A PART OF OUR NATIONAL DEFENSE AS THE PENTAGON BUDGET."

I URGE THE ADOPTION OF THIS LEGISLATION. I LOOK FORWARD TO THE DAY THAT WE CAN COOPERATE WITH THE FEDERAL ATTORNEYS IN DETROIT TO MAKE IT THE KIND OF CITY WE WANT IT TO BE.

Chart I

IMPACT OF FELONY FIREARM LAW
EFFECTIVE DATE JANUARY 1, 1977

	Base Yr. Prior to Statute 1976	1977	% Change From Base Yr.	1978	% Change From Preceding Year	% Change From Base Yr.	1979	% Change From Preceding Year	% Change From Base Yr.	1980	% Change From Preceding Year	% Change From Base Yr.
Robbery Armed												
Total	21,213	15,832	-25.3%	12,283	-22.4%	-42.0%	8,330	-32.2%	-60.7%	9,680	+16.2%	-54.4%
With Guns	9,267	6,408	-31.0%	4,390	-31.5%	-52.0%	4,494	+2.4%	-51.5%	5,451	+21.3%	-41.2%
Without Guns	11,946	9,424	-21.1%	7,893	-16.2%	-33.9%	3,836	-51.4%	-67.9%	4,229	+10.2%	-66.6%
Homicide												
Total	673	478	-29.0%	498	+4.2%	-26.0%	451	-9.4%	-33.0%	548	+21.5%	-18.6%
With Guns	526	349	-34.0%	353	-1.1%	-32.8%	280	-20.7%	-46.8%	335	+19.6%	-36.3%
Without Guns	147	129	-12.2%	145	+12.4%	-1.3%	171	-15.2%	+16.3%	213	+24.6%	+44.9%
Rape												
Total	1,230	1,277	+25.0%	1,288	+.9%	+4.7%	1,990	+35.3%	+61.8%	1,878	-5.6%	+52.7%
With Guns	347	248	-28.5%	249	+.4%	-28.2%	335	+25.7%	-3.5%	299	-10.7%	-13.8%
Without Guns	883	1,029	+14.1%	1,039	+.1%	+15.0%	1,655	+37.2%	+87.4%	1,579	-4.6%	+78.8%

Chart II

COMPARISON OF ALL FELONY DISPOSITIONS TO FELONY FIREARM DISPOSITIONS

Trial Stage Dispositions

1980

ALL FELONIES	8974					
GUILTY PLEAS		7402	82%			
TRIALS		1572	18%			
BENCH TRIALS			753	48%		
GUILTY					482	64%
NOT GUILTY					271	36%
JURY TRIALS			819	52%		
GUILTY					491	60%
NOT GUILTY					328	40%

FELONY FIREARM ONLY

FELONY FIREARM	721					
GUILTY PLEAS		313	43%			
TRIALS		408	57%			
BENCH TRIALS			213	52%		
GUILTY					27	13%
NOT GUILTY					186	87%
JURY TRIALS			195	48%		
GUILTY					104	53%
NOT GUILTY					91	47%

NOTE: 60% of defendants found not guilty of felony firearm in bench trials are convicted of the underlying felony.

Senator **Specter**. At this point let me ask Mr. Kenneth Conboy, deputy commissioner for legal matters of the New York Police Department to join you in a panel, Mr. Cahalan. Why don't you stay where you are and we will have Mr. Conboy step forward at this time.

Mr. **Conboy**. Good morning, Senator.

Senator **Specter**. Mr. Conboy received his bachelor's degree from Fordham College in 1961, his master's in American urban history from Columbia University, and his J.D. in 1964 from the University of Virginia.

He is currently a faculty member in the Organized Crime Institute at Cornell Law School as well as deputy commissioner for legal matters and counsel to the New York City Police Department. He is responsible for the department's criminal justice operations and is legal counsel to Commissioner McGuire.

We welcome you here, Mr. Conboy.

STATEMENT OF KENNETH CONBOY, DEPUTY COMMISSIONER FOR LEGAL MATTERS, NEW YORK POLICE DEPARTMENT, NEW YORK, N.Y.

Mr. **Conboy**. Thank you, Senator.

What I would like to do is just read a few excerpts from the prepared statement which the committee has and then respond to any questions you might feel appropriate.

Senator **Specter**. That would be fine, Mr. Conboy.

Mr. **Conboy**. The New York Police have in the last 9 months, in cooperation with the New York County district attorney, Robert Morgenthau, developed an integrated career criminal approach to what can only be described as an awful and tragic crime control problem in New York City.

As the committee may know, the New York Police is one-third smaller now than in 1975 and because of that fact I have to amend the statement Mr. Cahalan made.

The career criminal unit in the Manhattan district attorney's office has not been able to stem the rising crime primarily because of the erosion in the strength of the New York Police.

We have had a rise in crime in the last 5 years that has put New York ninth in 1980 on the major felony index of the FBI, where it was 18 in 1975. And we are, sadly, No. 1 in the United States in robbery.

In the face of this it was determined that a career criminal unit in the police detective division had to be created to augment and support prosecutors in Bob Morgenthau's office, to fill the gap between the arrest sufficiency standards that typically characterize a police approach to robbery cases and the conviction beyond a reasonable doubt standard, which, of course, is the legal standard in all of our courts.

This felony augmentation program, then, was committed to deal with hardcore robbers. It was limited to robbery and those robbers who had been arrested twice for robbery in 36 months and who were between the ages of 16 and 35. A target list of 1,100 career criminals was established as the centerpiece of this project.

Now in the event of the routine arrest of any target by the patrol force, senior detectives immediately assume investigative responsibility for the case. These detectives are assigned on an around-the-clock basis at the central booking facility to involve themselves at the immediate point of origin of the case, to shore it up.

The great tragedy in our criminal justice system is the erosion that occurs to the huge majority of arrests made by police, felony arrests made by police in the course of their patrol tours. Unless detectives are on the scene to do those things which we habitually do, for example, in the murder case or terrorist case, or cases involving racketeers, unless we can provide detectives of sufficient expertise and availability in the garden variety case, the cases of robbery and burglary, of which we have tens of thousands in New York City each year, then the case will erode within 24 hours of the arrest and will be dismissed or treated as a misdemeanor and there will be no viable sanction.

Senator SPECTER. It will erode because there is not the gathering of evidence necessary to obtain a conviction?

Mr. CONBOY. Correct.

Typically, the patrol officer, whose job, by the way, is not investigation but patrol, he simply secures, in most robbery cases, an eyewitness identification. That is the basic evidence in the great majority of all robberies brought.

There is very little in the way of the gathering or securing of additional witnesses, forensic experts on the scene, analysis, for example, of a defendant's MO—modus operandi. Essentially what we have——

Senator SPECTER. It is not a standard practice to assign a detective to a robbery or burglar case?

Mr. CONBOY. It is a standard practice if an arrest has not been made and, of course, we only clear about 15 percent of all robbery complaints in New York, so in those 15 percent of the cases where a suspect is in custody, the arrest normally occurs at the scene, or near it.

A victim is mugged. The victim screams. A policeman is on the scene and the culprit is apprehended. Or—a slight variation on the facts—the victim is placed in a squad car and he or she observes the suspect on a street corner. The police officer takes that person into custody. A lineup is had. The victim identifies the suspect and you have a prima facie case.

The difficulty is when the district attorney talks to that witness he finds out that she wears glasses, which she didn't have on on that occasion, or that she did but they were knocked off, or that she, like most other honest people in this situation, will say she thinks it's the culprit but she's not certain.

A search may or may not have been conducted from the point of the crime to the point of apprehension to determine whether, for example, the pocketbook can be recovered. A weapon may have been seen but it may not have been recovered. The doorman at the corner of the intersection where the crime occurred may not have been interrogated as a possible source of corroboration for the victim.

And, by the way, the reason for that—and I want to emphasize it—is that the police today in New York City are dealing with 20 percent more crime and 33 percent fewer men and women on the force. We have some precincts in New York City where there are two patrol cars to cover an entire precinct on the midnight to 8 a.m. tour.

New York has come through an extraordinarily difficult financial crisis and the criminal justice system has taken its shrinkage, just like every other agency in the city, and that is why the logic of career criminal prosecution is so appealing and that is why our program—which I do want to return to and just give you the good news of some tentative analysis in our first 235 cases—is encouraging.

The typical indictment rate in New York City by our beleaguered prosecutors, and Senator, I guess you know we have five prosecutors in New York City, is 20 percent. We only clear 12 percent of the felonies, and of those 12 percent the district attorneys get indictments in only 20 percent of the cases. So the odds are very long against doing any serious time for the commission of a felony.

Senator **Specter**. Why is there such a difference, achiving indictments in only 25 percent of the cases? You saying there is not even prima facie evidence?

Mr. **Conboy**. Well, in the great majority of prosecutions that are brought the prosecutor must make a judgment, just as, for example, the Police Commissioner and Legal Aid Society and every other component in the system must make a judgment, as to which cases warrant the focused resources of the system.

The great majority of felony cases in New York City are treated as misdemeanors—80 percent of them—and a good percentage of those are dismissed or reduced even further to what are called violations. The reason, simply, is a resource crisis of appalling dimension.

As I said, the typical indictment rate is 20 percent. In the career criminal project, this coordinated and integrated police-prosecutor program, the indictment rate is 60 percent.

With respect to the incarceration rate, 94 percent of those in this program convicted of felonies as opposed to 70 percent on a citywide statistic, were sent to jail.

The most important result of this project was that the felony conviction it secured was the first ever received by a target in 56 percent of the cases and 50 percent of the convicted felons received the first jail sentences in their criminal careers.

Let's look for a minute at the criminal histories of these people. Two hundred and thirty-five cases have been resolved and here is what the defendant history reflects. They have an average of twelve previous arrests per target, seven felonies and five misdemeanors, and an average prior conviction rate of .4 felony offenses and .4 misdemeanor offenses.

The aggregate amount of time served for the average target, with his twelve previous arrests, I remind you, was less than 3 months. In the 235 project cases under review, the jail sentences imposed in 86 percent of the cases exceeded all previous combined jail sentences imposed upon the defendant.

Now the Manhattan list of 1,100 has now been expanded to a citywide list of almost 6,000 career criminals. The Manhattan project has recently been expanded with additional resources made available by the mayor and the New York State Legislature. We now have 6,000 career criminals on the list.

Senator SPECTER. What kind of additional resources have been made available?

Mr. CONBOY. The New York Legislature made available $16 million in June of this year for the institutionalizing of programs of the kind I am describing in prosecutors' offices across the State. The city budget authority has made available funds for substantial additional detectives, so we will in fact be assigning over 200 additional detectives to the career criminal program.

One thing I do want to mention, Senator, is sometimes when you look at the overall strategy, the tactics become obscured. The whole question of histories and predictability with respect to whether people will or will not commit particular kinds of crimes requires a careful and sophisticated computer file system.

We have established, in the New York Police, a system called CATCH—that is c-a-t-c-h—for computer assisted terminal criminal hunt. It is programed through a complex coding procedure to produce, from data in tens of thousands of arrest cases since 1978, patterns of behavior, crime situs, physical characteristics, type of victims brutalized, use of accomplices and a variety of other types of relevant information. This process leads to the production of what we call biographical files, which we transmit to the district attorneys in the relevant boroughs when a target on the list is arrested.

There are two aspects to this program. There is a reactive aspect where a patrol officer makes an arrest. The detectives immediately augment the case. And there is a proactive aspect which involves continued surveillance of the most violent, dangerous criminals. In other words, we are doing now with muggers and robbers what district attorneys and police have done for many decades with racketeers and major drug dealers; we are making the career criminal, who outnumbers the racketeers and drug dealers by tens of thousands, the target of both reactive and proactive policing strategies.

Now the last point I want to share with you is the volume of career criminals that the U.S. Government may be dealing with, if the bill is enacted. Let me just give you some data from the New York State computers.

The New York State Division of Criminal Justice Services is working with the New York police to produce a conviction-based list of career robbery specialists. We are now dealing only with arrest history and we recognize that this is a weakness in terms of our project.

During the last 10 years 110,748 persons were arrested at least once for robbery in New York City. Of these, 33,907 are convicted felons arrested for robbery, and convicted of some felony. There are 22,108 in the two or more robbery arrest category, which, by the way, was the criteria in the Manhattan project, and 20,380 of these are convicted felons.

Senator SPECTER. Convicted once but perhaps not twice? Convicted on some occasion?

Mr. CONBOY. That's correct.

In this universe of robbery arrestees—and I will be delighted to provide the committee with the computer printouts in all categories of robbery and other crime in New York City—in this universe of robber arrestees there are over 1,000 individuals who have been arrested at least three times for robbery and have three or more robbery convictions.

Senator SPECTER. 1,000, did you say?

Mr. CONBOY. There are 1,000 persons in that universe, going back 10 years, who have three robbery arrests and three robbery convictions.

Now it's not clear how many of these potential targets are currently in prison or in which age cohorts they are. And because of legal restraints, highly relevant juvenile history is not included. We are considering the prospect of utilizing police records on juvenile apprehension to status persons with respect to our career criminal list.

This data may not, under New York law, be utilized by the district attorney in terms of prosecution of adult crime.

Senator SPECTER. May it be used by judges in the sentencing of adult criminals?

Mr. CONBOY. Yes.

Senator SPECTER. Juvenile records are available for sentencing once someone is convicted over the age of—is 18 the cutoff in New York?

Mr. CONBOY. Yes. The age is 16 with respect to most crimes, a minimum age of 16.

However, we have a new statute in effect for about 36 months which authorizes a prosecution in adult court for the crime of homicide if someone is 13, the years being 13 to 15. For 14- and 15-year-olds certain other violent felony offenses may be prosecuted in adult court.

Senator SPECTER. But the general cutoff is 16 in the State of New York?

Mr. CONBOY. That's correct, Senator, yes.

Now we have, of course, a very, very strong conviction that we can over time strategically reduce the level of violent street crime in New York by attacking the problem through a career criminal focus.

We cannot now tell you that we are certain that that will happen. The program is too young.

Senator SPECTER. But you think you can?

Mr. CONBOY. Yes, we think we can.

Senator SPECTER. Why do you think you can? Because the felons convicted in the project commit a lion's share of the crime.

Mr. CONBOY. Because I was a prosecutor for 13 years and I am absolutely convinced that given the prison crisis in New York selectivity is the only responsible course to follow. We have 22,000 beds in the New York State prison and they are now 104 percent capacity. In the city prisons we are 100 percent. The U.S. courts have involved themselves in the question of the constitutionality of these conditions.

Senator SPECTER. By the city prisons you are talking about detention facilities prior to trial?

Mr. CONBOY. Yes, and some sentenced 1-year prisoners. The city jails not only deal with detention prisoners but city misdemeanants as well.

Senator SPECTER. How many beds are there in the city prisons?

Mr. CONBOY. That I can't tell you, Senator.

Senator SPECTER. Can you give me a ball-park figure?

Mr. CONBOY. Well, I think we are talking in terms of approximately 6,000—I'm sorry, 9,600. But I will have to check.

Senator SPECTER. Is a significant percentage of those in city prisons there because of sentencing as opposed to detention—sentencing up to 1 year?

Mr. CONBOY. Yes. We have what is called State sentenced prisoners who are sentenced felons who are being maintained in the city prisons pending availability of space in the State prisons.

I might add that problem has been significantly reduced because the Federal court has entered an order against the State corrections commission to speed the reception of sentenced prisoners.

Senator SPECTER. That is the third aspect of your city prisons—those who are awaiting trial, those who are sentenced for a year or less and those who are awaiting transfer to State prisons?

Mr. CONBOY. Correct. Correct, Senator, yes.

Senator SPECTER. I would be interested if you could provide to us the specific figure on available space in your city prisons with a breakdown.

I would be surprised, for example, if you have very many people serving up to 1 year on sentences, but I would be very much interested to know that.

Mr. CONBOY. Well, the single, I think, most critical observation to make about sentencing practice in New York is that because of this inverted funnel which most criminal justice systems deal with there are large numbers of persons with very serious criminal histories who are serving 3 months, 6 months, or 9 months at Rikers Island, which is the main city prison. And they are serving that sentence as a result of a plea bargain which, in most cases, frankly is necessary because of the resource crisis across the board.

We do have a significant number of misdemeanants on reduceed felonies who are serving up to 1 year at Rikers Island.

Senator SPECTER. Are you talking about 3-month and 6-month sentences imposed for people who have multiple offender records?

Mr. CONBOY. Oh, yes, yes.

Senator SPECTER. Felony records?

Mr. CONBOY. Oh, yes. In fact, as I have indicated, the typical target in our study had 12 previous arrests, 7 of them for felonies with 4 misdemeanor convictions and 0.4 felony convictions. The great majority of the people in this program have never been to State prison.

Senator SPECTER. Well, simply stated, Mr. Conboy, how can that be tolerated?

Mr. CONBOY. Well, the fundamental problem with criminal justice in New York, frankly, has been the enormous amount of, I think, collateral reform and there was not really attention paid to institutional reform of the primary or core agencies. The career criminal concept is elementary, but it addresses, at least, the basic issue of criminal control.

Senator SPECTER. What you are describing is a situation with people who are career criminals, repeat offenders, with many offenses for robbery and burglary, who are plea bargained into 3- and 6-month sentences. You are nodding yes.

Mr. CONBOY. Yes, that is correct, sir, yes.

Senator SPECTER. How can that be tolerated? How can that go on?

Mr. CONBOY. Well, unfortunately, the problem in New York is it must to a certain extent be tolerated, given the resource constaints. And I know District Attorney Morganthau is scheduled to testify before the committee and I'm sure he'll elaborate on why prosecutors are confronted with the necessity to deal with serious crime in this fashion.

Senator SPECTER. What is serious enough so that it is not subject to plea bargaining by those standards?

Mr. CONBOY. Well, I think——

Senator SPECTER. In New York City.

Mr. CONBOY. I think that essentially what is required is that the police and the prosecutor agree upon coherent standards as to exactly, for example, what is a career criminal. We believe that we should concentrate on only street robbery defendants. We believe that we should concentrate on people who are in the early side of the 18-to-28 age bracket.

We believe that we should concentrate on people who have a pattern of criminal behavior because, like everything else, Senator, it is like a class with a teacher in front of it, and the judge is sitting there in the courtroom and so is the prosecutor and all of the students are raising their hand. They want to be called on and he can call on only one or two and he must ignore or marginally give attention to the great majority of the cases before him.

Senator SPECTER. Well, earlier, when you referred to the 1,100 career criminal targets you defined them, as I recollect, as someone who had been convicted of one prior felony within, what was it, a 36-month period?

Mr. CONBOY. Senator, it was two prior arrests for robbery—arrests, not convictions. That, I agree, is the weakness in this program.

Senator SPECTER. Two prior arrests within how long a period of time?

Mr. CONBOY. Thirty-six months.

Senator SPECTER. Thirty-six months?

Mr. CONBOY. Yes.

Senator SPECTER. It sounds to me as if you have a lot of people who have been convicted of two or more robberies within that category, who are plea bargaining, leaving you 3-month or 6-month sentences.

Mr. CONBOY. Yes.

Senator SPECTER. Mr. Cahalan, do you have anything like that in Detroit? We did not in Philadelphia.

I had a policy against plea bargaining.

The situation you describe, Mr. Conboy, is—I don't have a word for it. It is extraordinary. It is terrifying.

Mr. **Cahalan**. We have policies in our offices of when we will negotiate for a plea. And as it is now, 38 percent of all cases plead guilty as charged and robbery armed has to go as charged.

And when I initiated that procedure I predicted we would have chaos in the courts and we did not. As many people pled guilty, pretty much, as before that and anyone who has been convicted of a felony—two felonies in, I think, the last 5 years, no plea bargaining, regardless of the crime charged—felony-firearms, no plea bargaining.

We have a policy on all crimes, really, and about 30 percent of those who plead guilty, plead guilty as charged.

Senator **Specter**. You gentlemen both know that the National Commission on Criminal Justice Standards and Goals in 1973 made a proposal for the abolition of plea bargaining within a 5-year period. It was widely commented upon as being somewhat utopian. My sense is the same as that District Attorney Cahalan has suggested here, that if you get tough enough on plea bargaining you find you can work within the system.

But what you describe, Mr. Conboy, and I understand your problems, I am not being critical. I am just wondering what can be done to give you some relief, because you describe a situation which is totally different, I think, from what Mr. Cahalan finds—and he is nodding yes—in Detroit or from what I observed in Philadelphia. New York is different, but I do not believe it is that much different.

Mr. **Conboy**. I think again, as a police official I could not be more sympathetic to a proposal that plea bargaining be limited, for the simple reason that rank and file police are appalled at the systematic erosion of viable felony cases when they are brought into the criminal justice system.

On the other hand, District Attorney Morgenthau in Manhattan is dealing with facilities that can allow at the maximum, the trial of 750 cases. So even if we——

Senator **Specter**. 750 cases?

Mr. **Conboy**. Yes, felony cases, in the Supreme Court, which is the trial court.

Senator **Specter**. A year?

Mr. **Conboy**. Yes.

Senator **Specter**. 750 cases a year in the trial court for Manhattan County?

Mr. **Conboy**. Yes, that is right.

Senator **Specter**. How many judges do you have?

Mr. **Conboy**. Well, that is another problem. We are dealing basically with about a 40-member court. But the great majority of those judges are calendar judges, dealing with enormous numbers of pending cases.

And what occurs—it seems to me that we are unrealistic in New York to expect that we are going to have a significant reduction either in plea bargaining——

Senator **Specter**. You have 40 judges and how many of those can sit in one day?

Mr. **Conboy**. There are approximately 25 courts in which judges preside, but the great bulk of those parts are calendar parts. So we might have 8 to 10 trials going forward each day.

Senator SPECTER. When I was district attorney of Philadelphia, we had 45 courtrooms functioning every day. How many do you have, Mr. Cahalan?

Mr. CAHALAN. Felony courtrooms?

Senator SPECTER. Yes.

Mr. CAHALAN. About 25.

Mr. CONBOY. I think plea bargaining itself as such, I think taking a reduced plea is not necessarily destructive to public justice in an individual case.

Senator SPECTER. Not if there is a sentence.

Mr. CONBOY. Pardon me?

Senator SPECTER. Not if there is a significant sentence.

Mr. CONBOY. That is what I mean. If there is a significant sentence.

Senator SPECTER. But is there a significant sentence?

Mr. CONBOY. We do not feel there is across the board in New York. What we feel is, it is our responsibility as police officials to recognize the dilemma prosecutors are in. Heretofore police commissioners took the basic position, we make the arrests and it is up to the prosecutor to get a felony conviction. And there was a great deal, in my opinion, of relatively irresponsible walking away from the endemic problems of the system.

And we do feel that to focus and concentrate on career criminals with long sentences, significant 10-, 15-, and 20-year sentences, is the only responsible approach.

Senator SPECTER. Mr. Conboy, would you think it an appropriate use of Federal resources to have the U.S. attorneys in New York City handle some of these career criminal cases that are being virtually ignored by the prosecutorial system in effect in your city?

Mr. CONBOY. Yes; not only do I think it would be very salutary for the people of the city, but I think there is a record, almost an unrivaled record in New York City, of Federal and local cooperation, exemplified, for example, in this brilliant cooperation over the weekend with respect to the terrorist activities of the Weathermen and the BLA, and, of course, prior to that a very great success made by the joint task force in the major drug field.

So yes, I think it would be most welcome, and I think it would be marked by a very high spirit of professional cooperation and regard for both local police officials and Federal agents.

Senator SPECTER. Your sense is the five district attorneys of the boroughs of New York City would not be offended by any suggestion of Federal intrusion, but there would be the spirit that there are enough career criminals to go around and the more prosecutors working on it the better?

Mr. CONBOY. I have not spoken to them about it, but my own sense is there is such a high degree of concern throughout the criminal justice system in New York that this would be welcomed. But whether there would be a preference on their part for more direct funding I do not really know.

Senator SPECTER. They might have a lot of preferences, but given an alternative of having Federal legislation which would extend coordinate Federal jurisdiction over career criminals who have committed two or more robberies or burglaries, and a third with the use of a firearm, do you think, aside from the issue of preferences, they would like that legislation enacted?

Mr. CONBOY. Senator, I would rather not speak for them. My sense is that they would. I frankly cannot see how anyone confronted with our difficulties would not welcome this. But on the other hand, I am slightly reluctant to speak for them.

Senator SPECTER. I realize you have not, and it was not your purpose to have talked to them or have gotten commitments. I really asked just for your sense as to what you would expect there to be.

One of the concerns, which is a theoretical concern, is that local prosecutors might say we prefer to do it ourselves, which I think is something that might be true in a large number of circumstances. But as Mr. Cahalan has testified, in this area it is so important, we are so overrun with career criminals, that the answer is rather plain, as he has testified and as I would have expected from my experience. It is in that sense I am asking for your general feel for the situation.

Mr. CONBOY. Yes, I think there would be a generally positive disposition on their part to this bill.

Senator SPECTER. A question for both of you gentlemen. Mr. Conboy has already covered it. But what are the resources like in Wayne County, Mr. Cahalan, for accomplishing trials on a speedy basis within the limits, say, of the Federal Speedy Trial Act? How fast are you able to dispose of your cases?

Mr. CAHALAN. We can dispose of them quite quickly. Our system works very well. The vast majority of trials are disposed of within 90 days. So we would have no problem of keeping it within, I think it is 6 months, is it not, the Speedy Trial?

Senator SPECTER. I think it is faster than that. I think it is 90 days.

Mr. CAHALAN. I do not know, whatever. But we could do it.

Senator SPECTER. Mr. Michel tells me it is about 100 days on the average in the Federal courts.

Mr. CAHALAN. There is some talk on having the local district attorney and the local U.S. attorney interchangeable, so that our system could go over to the Federal court and prosecute under this and, if need be, the assistant U.S. attorney can come over to the state courts and do whatever prosecution they want, which is not a bad idea.

Senator SPECTER. What has your experience been, Mr. Cahalan and Mr. Conboy, on the issue of sentencing? You were suggesting earlier that judges were reluctant to sentence under the mandatory provisions, someone using a firearm in the commission of a felony, and that they would acquit rather than convict, even in the face of overwhelming evidence, to avoid the necessity of imposing that mandatory sentence.

What is your general feel as to the adequacy of sentencing generally in Wayne County?

Mr. CAHALAN. It is not adequate. I think certainty—I am not talking about severity, but certainty of punishment will deter crime, and we have never had it in the United States, not only in Wayne County.

Senator SPECTER. Do you think that is a problem that exists across the country in State courts?

Mr. CAHALAN. Yes, it is about the same across the country. I think statistically 60 percent of all convicted felons do not go to jail across the country, and I think that is the problem. And there is some movement afoot in Michigan to have what they call presumptive sentencing. The legislature would say that the sentence should be such and such, and if you want to go below that, give reasons on the record and if you want to go above that, give reasons on the record, which would be a step in the right direction.

But it is a difficult thing to do, because for some reason we want to continue to treat people who commit crimes as not human, that they are sick and should be treated and that they are not responsible for their acts. And we are fighting that all the time. That I think is one of the biggest problems in the whole philosophy of criminal justice. That is, a man is responsible for his acts and he should be punished for what he does.

Senator SPECTER. What is your sense of the adequacy of sentences for those convicted who have multiple offenses?

Mr. CONBOY. The real problem in New York is we have an indeterminate sentence structure. The Governor of New York appointed District Attorney Morganthau and a number of other outstanding officials to a blue ribbon commission to study sentencing structure, and they have recommended we abandon the indeterminate sentence.

What happens is the judge sets a minimum and a maximum, and when he sets the minimum, for example 0 to 4 years—which is, by the way, the basis on which most felonies are plea bargained—the parole board determines whether a man should be released after serving one-third of the maximum. And in the case of 0 to 4 there is no minimum, so he could be released after serving the minimum of 1 year.

We have life sentences in the drug law. The famous Rockefeller drug law provides for a zero to life sentence. So people take pleas and it looks great on the record that someone has been convicted and sentenced to life. However, he serves in most cases, 2 or 3 years.

Because of the resource crisis, we have a bond issue on the ballot next Tuesday in New York to provide for building of additional prison facilities. We have twice as many people in prison now as we did 10 years ago in New York. The criminal justice system has not been passive or quiescent. There has been, I think, a very creditable performance, given one-third fewer police, desperate conditions in the jails, no new prisons built in decades, a probation department and parole facilities, legal aid, totally overwhelmed.

Senator SPECTER. Mr. Conboy, I can understand your problems. I just cannot understand your conclusion that the performance has been credible.

Mr. CONBOY. Again, I am not suggesting that this is in any kind of broad sense something we are happy with. But I do feel that you have to look at the overall criminal justice system as an integrated institution.

Senator SPECTER. It is a tremendous compliment to the allure of New York City that you are able to keep so many people there, given the circumstances.

Mr. Conboy, one question somewhat beyond the range of today's topic. This subcommittee is concerned with juvenile justice as a principal charge, and I observed the lead story in the New York Times this morning about the breakdown of the juvenile court system there. Did you observe that?

Mr. CONBOY. Yes, yes.

Senator SPECTER. The administrative judge of the juvenile courts did not comment, in the absence of having seen the report. Did the conclusions, which suggest that there is very little attention to juvenile crime, square with your sense of the situation?

Mr. CONBOY. Yes, sir, it does.

Senator SPECTER. What is going on in that respect?

Mr. CONBOY. Again, it is a resource issue. There are very, very few secure facilities, given the expanding volume of serious juvenile behavior by juveniles. We have, for example, seen cases where juveniles have been arrested 20 and 30 times for violent acts and who have been held in secure facilities for 30 days or 60 days, and indeed many of them escape because the facilities are not really adequate.

Senator SPECTER. Juveniles arrested 20 or 30 times for violent acts and never really dealt with?

Mr. CONBOY. Correct.

Senator SPECTER. Never adjudicated or dealt with in terms of disposition?

Mr. CONBOY. Very often they are adjudicated as juvenile delinquents, but they are not given sufficiently long periods of control, of incapacitation in secure juvenile facilities. And again, the reason is you are talking in terms of very limited resources.

You have this pressure to make available the limited space for those people coming in the front, and people are being released. Young juvenile delinquents are being released with really very little in the way of a serious sanction.

Senator SPECTER. And what is the answer there, if any, except for additional resources?

Mr. CONBOY. Well, we think that to a very great extent you have to have the vigorous, aggressive prosecution. District attorneys have taken over some limited prosecution functions against juveniles in adult court, as I indicated.

I think what you have basically is an environment in New York, particularly in the juvenile area, where not to address a defendant seriously is to invite a terrible string of serious and violent crime. What the career criminal program is seeking to do is to basically interdict the career criminal at a very early point in his career, 16 or 17. This program cannot now address the juvenile because he is obviously not to be dealt with as a criminal. He is to be dealt with as a juvenile.

[The prepared statement of Mr. Conboy follows:]

PREPARED STATEMENT OF KENNETH CONBOY

The New York City Police continue to be confronted by the double helix of severe resource limitations and expanding levels of violent felony crime. The force is one-third smaller now than in 1975. In light of this dramatic shrinkage, it is not surprising that the F.B.I.'s index of major felony crime shows that in 1980 New York ranked ninth on the list of major American cities, up from eighteenth in 1975, and, that with respect to the crime of robbery, New York was first in 1980, up from fourth in 1975. And yet, there are almost twice as many convicts in New York State prisons now than there were ten years ago. Indeed, not only are our jails occupied to the absolute limit of their capacity, but every agency of our criminal justice system , strained to the absolute limits of their resources, become systematically less effective instruments of crime control as crime increases. In this maelstrom of institutional crisis, the huge preponderance of felony arrests made by police deterioriate to reduction or outright dismissal status in the arraignment and pre-indictment process.

In the face of this awful and tragic dilemma, the New York Police in 1979 undertook the design, testing and implementation, in partnership with the City's District Attorneys, of felony augmentation programs, predicated upon the career criminal concept. Clearly, given its resource crisis, the Department cannot assign detectives to augment, or case-build, all or even most felony arrests which are, by the way, initially made in media res, by police officers whose primary function is not investigation but patrol. Even if most felony cases could be augmented by detectives, the beleaguered Prosecutors and Courts could not indict and try in a substantially greater number of cases than they are now handling. And of course, with no surplus jail space, even if the average felon, by whatever criteria one wished to define him, were routinely convicted of a felony, his incarceration for an appreciable period of time is not likely.

The strategy of the program, therefore, is to achieve substantive enhancement of those cases involving criminals who, because of their violent histories, most deserve to feel the focused and coordinated resources of both the police and the prosecutor. Through mutual definition by police and prosecutors of the target class of potential arrestees, indictment cases can be shaped in both pre and past arrest status to maximize evidentiary quality and ultimately secure more punitive sentences in both tried and plea-bargained dispositions. The central point of this policy formulation is that the longer habitual felons are _in_ prison, the fewer felonies they commit upon innocent citizens _in_ society. The ultimate goal of the program is the strategic reduction of violent crime, over time, through the timely incarceration of persons who, by virtue of their criminal history, will predictably commit robberies or other crimes of violence while at liberty. Collectively, this class of career criminals, though a relatively small percentage of the criminal population, is thought to commit a disproportionately high percentage of violent street crime.

> Marvin Wolfgang of the University of Pennsylvania traced a cohort of 10,000 males born in Philadelphia in 1945. As a group, they recorded 10,214 reported crimes. But 6% of the total committed five or more crimes apiece, and were responsible for 50% of all offenses.
>
> The Institute for Law and Social Research, (INSLAW) conducted a study in Manhattan which estimated that about six percent of the total offender population commits 28 percent of the total serious crimes. For example, it was estimated that 3,150 career criminals committed 107,000 offenses.
>
> The Rand Corporation surveyed a group of 624 inmates drawn from the population of five California State

> penal institutions. One quarter of the group reported committing 58% of the group's armed robberies, 65% of all burglaries, and 46% of all assaults. The most criminally active 8% of the inmates committed over 60 crimes per annum according to the study. This core of offenders shared common characteristics and could be termed appropriately "career criminals."

You may be surprised that New York City's criminal justice system has not heretofore seized upon this approach as the only coherent and sensible response to rising crime and diminishing resources. Two accounts from the New York press illustrate this failure.

> (H.W.) from the time he was 15 years old, made hundreds of dollars a night prowling the city streets from Times Square to the upper reaches of Park Avenue, robbing everyone from 'men with attache cases' to clerks in small shops. The young man had little to fear even though he was arrested 11 times and convicted 5. He was 'allowed to walk out of the courtroom again and again.' He made it clear that while the city feared him, he had very little fear of the city or the massive system it had set up to deter, try and punish him. 'They got me, now' - and then they wouldn't. I'd go to court and they'd say, "Well, the lawyer's not here and such and such (is) not here.' 'So they'd let me go, give me a date to come back to court and I never come back - till I got busted again.'
>
> (A.S.) is one of a group of 500 offenders who NYC transit police feel are responsible for 40% of all subway crime. In February, 1979 he had a record of 60 prior arrests. By October, 1980, he had been arrested nine more times. The stiffest sentence given to him within that year and a half was 90 days.

This, then, is the environment in which the Department's felony augmentation program has been developed. In March, 1980 a pilot project was established in Manhattan which:

1) Created two special detective units, the Career Criminal Investigation Unit (CCIU), and the Career Criminal Apprehension Unit (CCAU), responsible for immediate post-arrest case building of arrested targets, public surveillance and apprehension, and post-arraignment investigation as needed or as requested by the prosecutor;

2) Established the Career Criminal Monitoring Unit (CCMU) in the Office of the Chief of Detectives, which is responsible for identification of career criminals currently at large in the community who, by virtue of their established criminal history records, are appropriate subjects for aggressive application of police/prosecutor concentrated resources. Additionally, this Unit develops biographical files on individuals with serious prior robbery or violent crime histories. These files contain up to date criminal history records, prior arrest reports, modus operandi information, history of weapons use, or acts of violence and threat utterance. Upon arrest, this file is transmitted to the District Attorney to assist in the prosecution of the current arrest, assist in shaping bail decisions by the Court, and facilitate priority handling of the case;

3) Provides for follow-up evaluation of the Program through routine daily interaction between the

police detectives in the CCIU, and the assistant prosecutors assigned to the Manhattan District Attorney's Career Criminal Bureau, and through more formal evaluations from time to time; to gauge FAP effectiveness or deficiencies measured by the number of successful prosecutions that ensure coupled with meaningful periods of incarceration for those convicted.

A target list of 1100 career criminals was established. The criteria for inclusion on the list were two arrests for robbery, or one robbery and one other violent felony, in Manhattan, within 36 months. The age parameters for those on the list were 16 to 35.

In the event of the routine arrest of any target by the patrol force, senior detectives immediately assumed investigative responsibility for the case. The project also contained a proactive element, in that those on the list who were most dangerous, were placed under police surveillance, in order to apprehend them in the act of committing a violent crime.

The results of the pilot project's first nine months were assessed by a conference of police executives, prosecutors and judges in March of this year. Of the 1100 targeted individuals, 59% have been arrested. Of 235 completed cases:

The indictment rate was 59% as compared to 20% citywide

Felony convictions on disposed indictments - was 89% versus 80% citywide;

FAP resulted in an incarceration rate of 94% compared to 70% for New York City felony cases. This broke down to 64% sentenced to state prison and 30% to local jails, compared to the citywide norm of 52% to state prison and 18% to local facilities.

Perhaps the most significant impact of FAP is that the felony conviction it secured was the first one ever received by a target in 56% of the cases and 50% of the convicted felons received their first jail sentence in their criminal careers.

A criminal history review of these 235 targets reveals an average of 12 previous arrests per target (7 felonies and 5 misdemeanors) and an average prior conviction rate of .4 felony offenses and 4 misdemeanor offenses. The aggregate amount of time served for the average target (with twelve previous arrests, I remind you) was less than three months. In the 235 project cases under review, the jail sentences imposed in 86% of the cases exceeded all previous combined jail sentences imposed upon the defendant.

Based upon these preliminary findings, the Police Commissioner last month established career criminal case augmentation units in all boroughs of the City. The Manhattan list of 1100 has become a citywide list of almost 6,000. A computer system called CATCH (computer assisted terminal criminal hunt) is programmed through a complex coding procedure to produce, from data in tens of thousands of arrest cases since 1978, patterns of behavior, crime situs, physical characteristics, type of victims, use of accomplices and a variety of other types of relevant information. This process facilitates the linking of listed targets to pending crime complaints where no arrests have been made.

The key criteria for inclusion on the target list remains robbery arrests and not robbery convictions. This will shortly change. The New York State Division of Criminal Justice Services is working with the Department to produce a conviction based list. This is a complex task. During the last ten years, 110,748 persons were arrested at least once for robbery in New York City. Of these, 33,907 are convicted felons. There are 22,108 in the two or more robbery arrest category (the Program's criteria), and 20,380 of these are convicted felons. In this universe of robbery arrestees, there are over one thousand individuals who have been arrested at least three times for robbery and have three or more robbery convictions.

It is not yet clear how many of these potential targets are currently in prison.

When the target list is converted to a conviction base, potential severity of future sentences will be substantially strengthened.

I am pleased to note that the New York State Legislation in June provided $16 million for police and prosecutors to begin institutionalizing these programs throughout the state.

The Felony Augmentation Program, as demonstrated in the Manhattan pilot project, is in theory and practice an effective operational construct for dealing with rampant violent crime in a period of severe resource constraints. The career criminal concept, upon which the Program is predicated, provides a viable and realistic standard against which the police, prosecutor and judges can measure the application of optimum professional attention and resources.

Whether the Program is availing as a device for the strategic reduction of crime over time, it is not now possible to say. But given the dramatically improved rate of survivorship of these felony cases as they proceed through the System, the comparatively more severe sanctions imposed after conviction, the limitation of grade slippage in plea bargaining, and the enhanced evidentiary quality achieved by detectives in the Program, there is a clear indication that crime control policies of the System ought to be shaped by the experience of this pilot project.

Senator **Specter**. Thank you very much, Mr. Cahalan and Mr. Conboy. We very much appreciate your coming.

Mr. **Cahalan**. If ever I can help, do not hesitate to call me.

Senator **Specter**. I will not hesitate, Bill. Thank you very much.

I would like to call Mr. Benjamin Renshaw, Acting Director, Bureau of Justice Statistics, U.S. Department of Justice.

STATEMENT OF BENJAMIN RENSHAW, ACTING DIRECTOR, BUREAU OF JUSTICE STATISTICS, DEPARTMENT OF JUSTICE

Senator **Specter**. Mr. Renshaw, welcome. We very much appreciate your being with us here today, and we will be very pleased to hear your testimony.

Mr. **Renshaw**. It is a pleasure to be here and have the opportunity to present excerpts from materials prepared for a recent briefing of President Reagan and senior White House staff on the national indicators system.

The national indicator system is a program under which statistical agencies inform the White House and executive branch agencies on social, demographic and economic trends. The briefing prepared by the Bureau of Justice Statistics is the fourth in a series and dealt with violent crime in the United States. The committee has been provided with copies of the briefing materials, and it is to these I will refer.

I will concentrate on the data bearing upon the offenses of robbery and burglary and some correctional issues which are the focus of the career criminal legislation being considered by the committee. First, based upon our National Crime Survey of victimizations, which reaches over 60,000 households and over 130,000 people annually, our measure of prevalence of violent crime against American households shows nearly 1 million, specifically 953,000, American homes were touched by robbery, 1½ out of every 100 American households.

With reference to burglary, from 7 to close to 8 percent of American homes were hit every year from 1975 to 1980, with over 5½ million homes impacted last year by burglaries.

Using estimates derived from both our National Crime Survey and the FBI's Uniform Crime Report, the 1979 losses as a result of robberies exceeded $100 million, and the cost of burglaries were in the range of $700 million to in excess of $1 billion.

Senator **Specter**. $100 million for robberies?

Mr. **Renshaw**. I was just going to say, given the known extent of nonreporting documented by the National Crime Survey, I think that is a very understated figure.

Senator **Specter**. It sounds like it to me. How many robberies were there which accounted for $100 million in losses?

Mr. **Renshaw**. I do not recall that precise number, Senator.

Senator **Specter**. I would appreciate it if you would follow up with us and get us the number of robberies, because I think if you divide the number of reported robberies into $100 million you will find that crime does not pay. That does not sound right to me.

And you say on burglaries $700 million to $1 billion?

Mr. **Renshaw**. In excess of $1 billion; yes, Senator.

Senator **Specter**. Again, if you would follow up and give us the total number of reported burglaries, I would appreciate it. I believe that again is an unrealistic figure.

Mr. **Renshaw**. We will give you both the estimates derived from the Uniform Crime Reports and the normally two to three times as many incidents that are documented by the National Crime Survey.

[The material referred to follows:]

Robbery Trends - 1973-80, NCS and UCR

	UCR		NCS		
Year	Number	Rate per 1,000	Number	Rate per 1,000	Percent Reported
1973	384,220	1.83	1,108,000	6.7	51.0
1974	442,400	2.09	1,199,000	7.2	53.6
1975	464,970	2.18	1,147,000	6.8	53.3
1976	420,210	1.96	1,111,000	6.5	53.3
1977	404,850	1.87	1,083,000	6.2	55.5
1978	417,040	1.91	1,038,000	5.9	50.6
1979	466,880	2.12	1,116,000	6.3	55.5
1980	548,810	2.43	1,179,000	6.5	56.9

Burglary Trends - 1973-80, NCS and UCR

	UCR		NCS		
Year	Number	Rate per 1,000 persons	Number	Rate per 1,000 households	Percent reported
1973	2,565,500	12.2	6,458,700	91.7	46.0
1974	3,039,200	14.4	6,720,600	93.1	47.8
1975	3,252,100	15.3	6,743,700	91.7	48.6
1976	3,089,800	14.4	6,663,400	88.9	48.1
1977	3,052,200	14.1	6,764,900	88.5	48.8
1978	3,104,500	14.2	6,704,000	86.0	47.1
1979	3,299,500	15.0	6,685,400	84.1	47.6
1980	3,759,200	16.7	6,817,300	84.2	51.3

Source: *Crime in the United States*, Uniform Crime Reports, *1980 and unpublished 1980* National Crime Survey data.

1980 Robbery Characteristics

Source: UCR

A. Geography (rate per 100,000 population)

Northeast	363	
North central	176	(70% in cities 100,000+)
South	199	
West	278	

B. Economic loss

Average loss per incident	$607
Total loss	$333 million

C. Place of occurrence (percent of total)

Street/highway	51.8%
Commerical house	13.8%
Gas/service station	4.1%
Convenience store	6.8%
Residence	10.7%
Bank	1.5%
Miscellaneous	11.3%

D. Weapon use (percent of total)

Guns	40%
Strong arm	38%
Knives	13%
Other	9%

1980 Burglary Characteristics

Source: UCR

A. Geography (percent of National total)

Northeast	22 percent
North central	21 percent
South	33 percent
West	24 percent

B. Type of place (percent of total)

Residence	67 percent
Non-residence	33 percent

C. Type of entry (percent of total)

Forced-entry	73 percent
Non-forced entry	19 percent
Attempted forced entry	8 percent

D. Economic loss

Average loss per incident	$882
Total loss	$3.3 billion

E. Time of occurrence

	Residence		Non-residence	
Day	1,003,954	42.2%	186,456	15.6%
Night	762,010	32.0%	659,348	55.1%
Unknown	614,744	25.8%	351,416	29.4%
Total	2,380,708	100.0%	1,197,220	100.0%

Attempted and Completed Violent Crimes

1980 NCS victimizations	Number	Percent of all violent crime	Percent within crime type
Total violent crime	5,974,000	100.0	
Completed	2,310,000	38.7	
Attempted	3,663,000	61.3	
Rape	169,000		100.0
Completed	38,000	0.6	22.5
Attempted	130,000	2.1	76.9
Robbery	1,179,000		100.0
Completed	870,000	14.6	73.8
Attempted	309,000	5.2	26.2
Assault	4,626,000		
Aggravated	1,661,000		100.0
Completed	573,000	9.6	34.5
Attempted	1,088,000	18.2	65.5
Simple	2,966,000		100.0
Completed	829,000	13.9	28.0
Attempted	2,136,000	35.8	72.0

Mr. **Renshaw**. Turning to the increase in reported violent crime——

Senator **Specter**. Before we leave that subject, would you have a judgment on the ratio of reported to unreported offenses?

Mr. **Renshaw**. I would say that for the crime of robbery, recognizing the differences in the touch injury, the touch completed and fulfilled, and attempts, that would be less than 50 percent.

Senator **Specter**. But how much less?

Mr. **Renshaw**. The estimates here are relatively imprecise, but——

Senator **Specter**. What is your judgment?

Mr. **Renshaw**. My judgment is that in terms of robbery, given the legal definition of the nature of that, that something in the area of 50 to 60 percent would be reported. I think, however, when you turn to burglaries, probably less than one in three are reported, and the reason normally elicited from the people we interview is, I guess mirroring some of the testimony you have already heard this morning, Senator, the belief the system will not be able to do anything about it, that they will not be able to retrieve or recover their property.

Senator **Specter**. What is your sense about how many rapes are reported?

Mr. **Renshaw**. That I believe would be in the 60- to 70-percent range.

Senator **Specter**. 60- or 70-percent of the rapes committed are reported?

Mr. **Renshaw**. Yes.

Senator **Specter**. Your experience is different from mine. I would be very surprised if it were that high a percentage.

Mr. **Renshaw**. Let me provide you later with the precise estimates for 1973 to 1979. The reason perhaps I would err on the high side is I am really convinced, Senator, that during the last 5 years the availability of rape prevention programs, the availability of rape treatment alternatives, the much greater attention that the police agencies are giving to the trauma of the victims, has induced and really produced a relatively dramatic change from what my feeling would have been if our reference point was the 1960's.

Turning to the increase in reported violent crime, over the 1970's, based on Uniform Crime report data, there has been a sharp steady increase between 1977 and 1980 in reported robberies, specifically an over 30-percent increase in those years, compared to less than a 4-percent increase from 1971 to 1976.

The career criminal legislation being proposed is tied directly to weapons use. Every year for the past 8 years, among all violent crimes a firearm was present in 30 percent of armed incidents, and a full one-third of all robberies in 1980, based on the NCS 1980 data. Among all violent crimes, offenders were more likely to be armed with a gun in robberies than in rapes or assaults. For all crimes, firearms were most likely to result in a fatality.

We have been accustomed to the actuality that many offenders and victims are family or acquainted with each other, and yet in 80.6 percent of 1979 robbery victimizations the offender was an individual totally unknown previously to the victim.

The trauma of the victimization is only compounded by our measurement that there is no recovery of cash or property in 70 percent of personal robberies.

Data from our National Prison Statistics established that prisons increased their proportion of violent offenders held from 52 to 57 percent from 1974 to 1979. Thus a clear 50 percent are in prison for violent offenses, even in the face of plea and sentence bargaining.

Half of all prison and jail inmates regularly use drugs before incarceration, based upon our periodic survey of prison sentences and inmate surveys, with over 50 percent of all prison inmates using drugs a month prior to the offense for which they were arrested.

Expenditure of resources for criminal justice operations in State, county and other local agencies increased from 1971–1979 from 10.5 to $29.5 billion, for close to a 150 percent increase. And yet since 1973 about two-thirds of the Nation's population has consistently believed that we have spent and are spending too little on crime.

Moreover, the dollar expenditure is mirrored in the dramatic increase in costs per inmate of over $9,000 per year, an increase of over $4,000 from 1972, with the cost of building a single maximum security cell now exceeding $70,000, with projected costs of over $90,000 by the end of the decade.

Finally, Mr. Chairman, the necessity of your proposal for rehabilitation programs is totally reinforced by the data provided in our presidential briefing. Nearly 330,000 prisoners were under the jurisdiction of State and Federal corrections authorities at year end 1980. Since then, as described in the materials made available to the committee today, the prison population in the United States has swelled by more than 20,000 during the first half of 1981, adding more persons to the rolls of the Nation's correctional institutions in these 6 months than in all of calendar year 1980, for a total of 350,000 prisoners.

In conclusion, without reference to the briefing materials, the number of crimes committed by consensually serious offenders unknown to the victim and therefore strangers and with substantial prior offenses is unacceptably high by any standard.

[The prepared statement of Mr. Renshaw follows:]

PREPARED STATEMENT OF BENJAMIN H. RENSHAW

Mr. Chairman, it is a pleasure to be here this morning and to have the opportunity to present excerpts from materials prepared for the September briefing of President Reagan and senior White House staff under the National Indicators System. The National Indicators System (NIS) is a program under which statistical agencies inform the White House on social, demographic, and economic trends; the briefing prepared by the Bureau of Justice Statistics, the fourth in the series, dealt with Violent Crime in the United States. The Committee has been provided with copies of the briefing materials and it is to these that I will refer; I will concentrate on the data pertaining to the offenses of robbery and burglary which are the focus of the career criminal legislation being considered by the Committee.

Some of the general conclusions from the data were that

- business, minorities, and juveniles are especially vulnerable to violent crime
- the costs of operating criminal justice systems are high, with the burden falling most heavily on state and metropolitan governments
- higher rates of incarceration have caused serious crowding in the nation's prisons and jails

Turning to the specific data from the BJS National Crime Survey of victimizations (see pages 5-6), the prevalence of violent crime against American households shows that nearly one million (specifically 953,000) homes have been touched by a robbery, or close to one and one half out of every one hundred American households; as a point of comparison rape touched 155,000 households or two tenths of one percent of the households. With reference to burglaries from seven to close to eight per cent of American homes were hit during the years from 1975 to 1980, with over five and a half million homes impacted last year (1980). Using estimates derived from both the National Crime Survey and the FBI's Uniform Crime Reports, the 1979 losses as a result of robberies exceeded 100,000,000 dollars; the costs of burglaries were in the range of over $700 million to one billion dollars; given the extent of non-reporting documented by NCS, these figures, despite their magnitude, are understated. Moreover the rates at which these crimes impact on United States citizens exceed the rates at which these households have to contend with unemployment, serious illness (death from cancer and heart disease) and other pathologies.

Turning to the increase in reported violent crime over the 1970's (see page 8a) based on Uniform Crime Reports (UCR) data, there has been a sharp and steady increase between 1977 and 1980 in reported robberies, specifically an over 30% increase in those years, compared to less than a four per cent increase from 1971 to 1976.

The career criminal legislation being proposed is tied directly to weapons use; every year for the past eight years, among all violent crimes a firearm was present in 30% of armed incidents, and a full one third of all robberies in 1980, based on NCS 1980 data. Among all violent crimes - offenders were more likely to be armed with a gun in robberies than in either rapes or assaults. For all crimes, firearms were most likely to result in a fatality.

As shown on the graphic dealing with victimization rates for cities and businesses (see p. 11), the robbery rate for businesses (banks, gas stations, convenience stores, other commercial establishments) is ten times higher than for robberies that occurred in the street or private residence;

stated in another way, over seventy per cent of robberies are directed against private citizens, yet the number of robberies per 100,000 businesses is ten times higher than the incidents per 100,000 businesses. The fact that bank robberies account for only 10% of all commercial robberies suggests that many of these smaller firms are ill prepared to absorb the loss.

We have been accustomed to the actuality that many offenders and victims are family and/or acquainted with each other; yet in 80.6% of 1979 robbery victimizations, the offender was an individual totally unknown (stranger) to the victim.

As illustrated in the graphic (p. 21) that establishes that blacks are more likely than whites to be victims of violent crime, again based on NCS 1979 data, blacks are more than twice as likely as whites to be robbed, with black males almost three times as likely as white males to be victims of robbery.

The trauma of the victimization is only compounded by our measurement that there is no recovery of cash or property in 73% of personal robberies; what has been ill gotten is gone.

As established by our message (see p. 29) that juveniles and youthful offenders (up to 21) account for more than 40% of violent crime, yet over 80% of violent crime is committed by persons over 18, with 64% of crime the responsibility of persons from 18 to 34 years of age.

Data from our National Prisoner Statistics establish that prisons increased their proportion of violent offenders from 52% to 57% from 1974 to 1979; thus a clear 50% are in prison for violent offenses even in the face of plea and sentence bargaining.

Half of all prison and jail inmates regularly used drugs before incarceration (see p. 34a-b), based on BJS periodic prison censuses and surveys, with over 50% of all prison inmates using drugs a month prior to the offense for which they were arrested.

Expenditures for criminal justice operations in state, county, and other local agencies increased from 1971 to 1979 from $10.5 to 25.9 billion dollars, for a close to 147% increase (146.7); yet since 1973 about two-thirds of the nation's population has consistently believed that too little is being spent on crime.

Moreover, this dollar expenditure is mirrored in the DRAMATIC increase in cost per inmate of over $9,000 per year, an increase of $3,900 from 1972, with the cost of building a single maximum security cell now exceeding $70,000, with projected costs over $90,000 by mid-decade.

Turning to the percent of reported violent crimes that result in incarceration, data from four states (California, New York, Oregon, and Pennsylvania) suggest that less than 10% lead to incarceration; parallel data for major metropolitan jurisdictions, specifically New York, suggest that only 1% serve time.

Mr. Chairman, the necessity of your proposal for rehabilitation programs is totally enforced by the data provided in our Presidential briefing - that 329,695 prisoners were under the jurisdiction of State and Federal correctional authorities at yearend 1980. Since then, the prison population of the United States has swelled by more than 20,000 during the first half of 1981, adding more persons to the rolls of the Nation's correctional institutions in these six (6) months than all of calendar year 1980, for a total of 350,000 prisoners. (Copies of our Bulletin, Prisoners at Midyear 1981, are available to the Committee.)

In conclusion - without reference to the NIS briefing - the number of crimes committed by consensually serious offenders, unknown to the victim and therefore strangers, and with substantial prior offenses are unacceptably high by any standard.

Senator **Specter**. Thank you, Mr. Renshaw. We very much appreciate your coming today and providing the statistics to us. And we would be very grateful for the follow-up materials we have requested.

Mr. **Renshaw**. Thank you, Senator.

Senator **Specter**. Thank you.

I would like to next call as a panel Dr. John C. Ball, Dr. Peter Greenwood, and Dr. Charles Wellford. We very much appreciate your coming. We will call first on Dr. Ball, who received his Ph.D. from Vanderbilt in 1955. He is the former president of the American Society of Criminology. And from 1962 to 1968 he was chief of the sociology unit of NIMH's addiction research center in Lexington, Kentucky; and since 1968 has been a professor in the department of psychiatry and sociology at Temple University.

Beyond inquiring which train you took this morning, Dr. Ball, were you on the one that was an hour late?

Mr. **Ball**. No, sir. I came down last night.

Senator **Specter**. That is wise. I came down on the one which was an hour late.

Thank you very much for coming, Dr. Ball. We welcome you here. We are pleased to hear your testimony.

STATEMENT OF DR. JOHN C. BALL, CRIMINOLOGIST, DEPARTMENT OF PSYCHIATRY, TEMPLE UNIVERSITY SCHOOL OF MEDICINE, ACCOMPANIED BY DR. DAVID N. NURCO, UNIVERSITY OF MARYLAND

Mr. **Ball**. Thank you, Senator Specter. I am glad to be here and have the opportunity to talk with the Committee and testify.

I would like to, if I may, just briefly review the major findings of the study we have just completed that represents, I think, the end result of about 10 years of research. And the full report is available for those who would like to see that, and I will just briefly go through some of the high points of our report and then there will be a chance for any questions or comments you may have.

We have now come to the point where we feel we are justified in estimating the annual and lifetime extent of crime committed by heroin addicts in the United States. Our recent figure, the result of this paper—and on my left is Dr. Nurco, one of the authors; there are two others who are at Temple University, who are not here. The results of our research indicate that heroin addicts in the United States at the present time are committing 50 million crimes per year. We feel this estimate is the first scientific estimate of the extent of crime committed by heroin addicts.

Senator **Specter**. Fifty million?

Mr. **Ball**. Fifty million, yes, sir.

Senator **Specter**. What is your evidentiary basis for that?

Mr. **Ball**. That is the nature of the paper I am going to elaborate on.

Senator **Specter**. Before you proceed.

Mr. **Ball**. Yes?

Senator **Specter**. How many crimes are committed. How does that relate to the total number of crimes committed in this country per year?

Mr. **Ball**. We really do not know the total number of crimes committed in this country, and I am glad you ask that question. My figures seem so different from the figures that have been presented here this morning already that I should say something about that.

Our figures are based upon self-reports of the addicts themselves, as well as official records. And our research indicates that less than 1 percent of the crimes—we have an exact figure on this—less than 1 percent of their crimes are cleared by arrest, that is result in arrest.

And we have gone into this at some length. So when I am talking about 50 million crimes, I am not talking about 50 million arrests. I am talking about 50 million days during which the individuals committed one or more crimes.

I think as a criminologist it is a little different approach. But we have been primarily interested in tracking and looking at the addicts over a long period of time, interviewing them, following them in terms of their daily activities, in terms of their official and institutional records. And we are interested in their continuing behavior over a long period of time, in great detail, I might say.

So that our data is quite different from just talking about someone having one arrest. As a matter of fact, the sample I will be referring to has had an average of 12 arrests per individual, but they have also committed just under 2,000 crimes per individual. So in fact arrests are not a very good indication of the extent of criminal behavior.

We know some of our addicts are committing crimes on a daily basis and sometimes are not arrested for several years. Some are not arrested at all. And that is the nature of the study I am reporting on today.

And as I go through, some of these points I am making by way of introduction will become clearer and how we arrived at these conclusions. So the findings that I am discussing are based upon interview data and extensive criminal records pertaining to 243 Baltimore opiate addicts. Most of these were heroin addicts. The 243 male addicts were a random sample selected from a population of over 4,000 known opiate users arrested or identified by the Baltimore Police Department.

I want to make the point that this sample was selected in a representative manner—we call it a random stratified sample. Thus this sample was not selected to obtain those with the most serious criminal histories.

This sample was selected to reflect what average addicts in a city such as Baltimore do over a period of time, and as a matter of fact we have in this sample individuals who commit crimes every day. And we have a few individuals who have not been involved in criminal activity. So I want to make that point clear, because there has been misunderstanding about that.

And that is the reason, because we are dealing with what we take to be a probability-based sample of addicts from a given list, we feel justified in projecting these figures to the national level.

Now, Dr. Nurco in a moment will say more about the extent to which we have looked into the validity of the data, and I think the validity of the data has been looked into in separate studies and has been the end result in many ways of 10 years of prior research in which we have developed the techniques for locating, interviewing, and collecting the information I have already alluded to.

Senator Specter. Dr. Ball, I am interested in your thought as to how many crimes there are committed in this country every year, just in a ballpark figure to get some idea. I know from the opening of your testimony the statistics you have here are very dramatic: 450,000 heroin addicts who commit more than 50 million crimes per year, and their lifetime criminality exceeds 890 million criminal offenses.

Mr. Ball. Yes.

Senator Specter. If these 450,000 addicts commit 50 million crimes a year, how many crimes are there in this country a year? One hundred million, 200 million?

Mr. Ball. Senator, I do not think we can answer that, and I am going to indicate a reason why we cannot quite answer it, because we do not have this kind of information on the U.S. criminal population. We do not have the kind of detailed information we have about these addicts on the general population of criminals in the United States.

Senator Specter. You are coming to the point of what is your evidentiary basis for the 450,000 addicts.

Mr. Ball. Yes, sir.

Senator Specter. And there——

Mr. Ball. Well, the 450,000 addicts, that is a Federal figure I took from the strategy report. I do not think that is the crucial part of my testimony, that figure. As I understand it, there are new estimates about to be released and that estimate might go up or down.

But whether it goes up somewhat or down, the general figure that I have here, 50 million, will only go up or down a little bit correspondingly.

Senator Specter. But the 50 million then is about 110 crimes a year for these 450,000 addicts, on the average; one hundred and ten times 450,000 gives you about 50 million.

Mr. Ball. At the end we went into a fairly elaborate procedure for the estimation of the number of crimes, which I will at least address briefly.

Senator Specter. All right.

Mr. Ball. Just a word about the methodology here. We have decided to look at crime in terms of crime days per year. That is, early on when we started looking at the data we found individuals who were committing 6, 8, 10 crimes a day, and to put these into a tabulation proved to be confusing.

So we developed a new measure which I call a crime day. It is a 24-hour period during which an individual commits one or more crimes. So when we say the average addict on the street commits 178 crime days or has that many crime days, that is what I am referring to. I am referring to the fact that during 178 out of 365 days he is committing one or more crimes.

Now, that kind of measure has proved to be very effective for us because it means we are not confronted by individuals committing thousands of crimes like shoplifting and distorting the statistics; and second, when we state the number of crime days per year at risk, we get a rate and that becomes intelligible to whoever looks at the figure in terms of what happens each year that he is out on the street.

So I just want to mention quickly that the findings are based on this concept of crime days, which is one reason, incidentally, for saying that this figure is an under-enumeration, the 50 million. It is an under-enumeration because we know many individuals commit more than one crime per day.

The actual figures here, if you are following in the testimony, at the bottom of page 1 and the beginning of page 2, almost two-thirds of the sample had more than 1,000 crime days per individual during the period in which we studied them. Almost one quarter, 23 percent, had more than 3,000 crime days per individual. The mean number of crime days for the 237 addicts who had at least one crime day was 1,999.

This addict sample, then, averaged some 2,000 crime days during an 11-year risk period. The total amount of time during which crime was committed by these 243 addicts during their years at risk then was 473,738 criminal-days. This total of almost one-half million crimes is an under-enumeration of their offenses, as multiple crimes occur during a crime day were common.

It is also pertinent to know that drug use or possession were not classified as crimes in this study. We found that the 237 addicts who had committed crimes—six had not—could be classified into nine types of criminal careers. These nine were: daily theft, daily drug sales, other daily crime, weekly theft, weekly drug sales, weekly other crime, infrequent theft, infrequent sale, and infrequent other crimes.

Some two-thirds of the 237 other addicts had theft as their principal type of crime. I will come back and say more in a minute about the nature of their criminal activity.

In an earlier study we went into some detail about the impact of addiction on criminal careers, and quite frankly we were surprised with what we found. We found, by comparing the amount of crime they committed when they were on opiates with that which they committed when they were off, that there was an overall sixfold increase in the number of crime days per year at risk during addiction as compared with the nonaddicted periods.

When addicted, the 237 male addicts committed one or more crimes during 248 days for each year they were on the street. When not addicted, this rate dropped to 41 crime days per year.

So this finding was unexpected, but I think of some consequence. For we determined that drug use was a major factor in increasing the level of their criminal behavior.

The lifetime arrests and incarceration of the 237 addicts I think are revealing. Most of the 237 addicts had been arrested several times and spent time in prison. I think this is important because there still is an argument about whether in the United States we are able to apprehend our criminals or not. And the fact is, in this group of individuals who had mostly committed numerous crimes, they had been arrested an average of 12 times and they had spent considerable time in prison.

The average number of arrests was 12, and the average number of imprisonments was 3.

Important to note, the probability of arrest for the entire sample was low. Less than 1 percent of their crime days were marked by arrests. To be exact, the 237 addicts had 2,869 arrests in 473,000 crime days, with a probability of less than 1 in 100. The probability that the crime day would result in arrest was less than 1 in 100.

The fact that crimes against property predominated in this addict sample should not be taken to mean that crimes of violence were absent, for most of the addicts committed numerous crimes of violence, mostly assault and robbery, and of course they were also involved in burglary and other types of crimes.

Sixty percent of the sample had been arrested for crimes of violence. Indeed, 12.4 percent of their total arrests were for violent crimes.

Now, that is just a brief overview of the fundamental data we obtained concerning the 237 addicts who committed crimes in the Baltimore sample. And I will just say a word now about how we moved from there to our figure for the United States. As I mentioned, we used the 1979 Federal strategy figure to come up with the 450,000 addicts. Then we subtracted the time in prison and through fairly straightforward calculations came to the extent of their crimes on a yearly basis and the extent of their crimes over the period from onset of opiate use to time of interview.

On a lifetime basis, which we are conservatively estimating as lasting only 16 years from onset of addiction, it is estimated that this male sample of 345,000 addicts in the United States commits crimes on over 689 million days.

We regard these estimates as a lower bound because of the shortened risk period, by which I mean that we interviewed them at age 35, but of course they had not stopped their criminal activity and they were going on. But in order to be conservative and not to inflate the figures, we are just enumerating the actual period we studied. We are not projecting into the figure what they might have done.

We regard these estimates therefore as a lower bound because of the shortened risk period and the fact that multiple offenses per day are frequent and are not counted in our crime day measurement.

The estimation of the lifetime criminality of female addicts follows the same procedure as males, except that their crime rate is lower and they have less time incarcerated. So I would say the lifetime criminality of the 450,000 addicts in the United States is then the sum of the total crime days for the 345,000 males and the 104,000 females. This is how we arrived at the straightforward figure of 819 million crime days.

I want to just make one point in conclusion, and Dr. Nurco here will say a few more words about our methodology. The one point I would like to make, it is going a bit beyond the data but it is a point I feel compelled to make. I certainly agree, the crime problem in the United States is one in which a relatively small group are creating a disproportionate problem for society, and I hope we can come to address this problem.

The further point I want to make, however, is that our efforts and our feeling that this problem should be addressed and addressed in a forceful way should not be taken to mean that we are not concerned about other social issues and other social problems. That is, my own feeling is I would like to see the crime problem contained and solved, as it were, in order that we might address other more important issues, such as education, employment and so on. And I think that is a point which hopefully is not inappropriate at this hearing.

Senator **Specter**. Mr. Nurco, would you like to make a couple of concluding comments?

Mr. **Nurco**. Yes, I would. I would like to say something about the sample and the accuracy of the information we have.

We drew this sample, as Dr. Ball mentioned, from the Baltimore City Police Department narcotics squad file. That particular squad has been very active over time. They went into existence in 1950 and have been very diligent with regard to trying to find out who is addicted, who is not, who is involved in drugs. And for that reason they not only arrested narcotics addicts, but brought them in for investigation only to determine what was going on on the drug scene and what was going on with them, and then placed them in their files.

So we used their files, accumulated from the period 1952 to 1976, in order to draw our sampling frame. We had some reluctance initially as to whether or not all of the addicts in Baltimore, all of the phenomena regarding addicts in Baltimore, would end up in the police files. So we did some tests prior to that.

One of the things we did was we went to the mental health system and found narcotic addicts there. We determined at one point that they were not known by the police and then went back several years later and found a significant number were then known to the police.

When we completed our interviewing, we went back and found out that there was approximately a 5-year lag in more recent years for addicts to be identified by the police as narcotic addicts. So eventually they ended up in the file and were included in our sampling frame.

So what we did then was take 10 whites and 10 blacks from each of those years to go out and interview. We found 98 percent of that population and had an interview response rate of 92 percent, using a 3-hour interview which segmented their lives into on-and-off periods of addiction. And once we did that, we went very deep in terms of what was your criminal behavior, what was your social behavior, what was your employment behavior, and so on, providing the base for the analysis on crime days.

Now, after we got the self-reported information—and I might add we got the interviews from—our interviewers were well qualified. They were specially trained for it. None had less than a bachelor's degree. They ranged from bachelor's degrees to Ph. D.'s.

Senator **Specter**. We will accept their credentials. What happened next?

Mr. **Nurco**. We then compared the self-reports to official records, and the keystone of that was comparing them to their FBI rap sheets. And we found from the FBI rap sheets they were telling us the truth about the arrests and incarcerations they had.

We also did an additional analysis on that FBI rap sheet for each of those individuals and we found that in more recent years this addict population was moving into more serious and violent behavior.

I have further support for the findings that addicts are continuing to engage in more violent crime than they had been earlier from another study we completed. In this work we studied addicts' characteristics and their drug-taking practices changing, and the police and court practices and the treatment system over a quarter of a century.

Using expert witnesses in each of those areas, namely, addicts, we determined in the early 1950's addicts tended to be close and familiar with each other, but during the latter 1960's and 1970's they became more competitive and violent. Now, generally addicts during the 1950's most commonly met their need for a source of money to buy heroin by petty crimes, nonviolent in nature, usually crimes against property rather than against persons. These often took the form of petty larceny, such as shoplifting or boosting, burglary, stealing on the job, stealing from cars.

Senator SPECTER. Doctor, I do not want to cut you off, but we are running late. Could you summarize just the highlights of any additional information you would like to call to our attention?

Mr. NURCO. Yes. In more recent years addicts are moving into more violent crime.

And in another study we just finished, we determined that from 230 whites and 230 male black addicts in Baltimore on the street, where we took a slice of their current lifestyle, 36 percent of that addict population were carrying weapons in the pursuit of their crimes.

[The prepared statement of Mr. Bell follows:]

PREPARED STATEMENT OF JOHN C. BALL

A research team from Temple University and from the University of Maryland has just completed a comprehensive study of the criminality of opiate addicts. The research provides a means for estimating the extent of criminality among heroin addicts throughout the United States. Our calculations indicate that the 450,000 heroin addicts in the United States commit more than 50,000,000 crimes per year and that their lifetime criminality exceeds 819,000,000 offenses.

The findings are based on interview data and collateral records pertaining to 243 Baltimore opiate addicts (most were heroin addicts). The 243 male addicts were a random sample selected from a population of 4,069 known opiate users arrested (or identified) by the Baltimore Police Department between 1952 and 1971. The sample was unselected for criminality, but stratified by race and year of police contact. Each of the 243 addicts was interviewed by specially trained interviewers who were familiar with the Baltimore addict subculture. The interview lasted some three hours and the questions were focused upon six topics: drug use, criminal behavior, work, living arrangements, drug selling, and sources of income.

The validity of the interview data obtained from these 243 addicts has been the subject of a separate study in which self-reports were compared with official records. It was found that there was no evidence of conscious distortion on the part of these addicts; there was no indication of a tendency to either cover-up (or deny) their criminal behavior, or conversely to exaggerate their criminality. The findings of this study substantiate the conclusions of prior research concerning the validity of interview data obtained from opiate addicts - namely, that valid data can be obtained if specially trained interviewers who are familiar with the local addict subculture are employed and adequate safeguards exist concerning the confidentiality of the information provided. In addition to the lengthy face-to-face interviewers conducted with each of the 243 addicts, comprehensive arrest, penal, hospital and other institutional data was obtained with respect to the addicts lifetime experiences.

A New Measure of Criminal Behavior: Crime-Days Per Year at Risk

In the present study, a new measure of criminal behavior is employed: Crime-Days Per Year at Risk. A crime-day is a 24-hour period in which an individual commits one or more crimes. The number of crime days per year at risk refers to the number of days per year that an individual has committed crimes from 0 to 365. This new measure, Crime-Days Per Year at Risk, was found to be efficacious as it permitted the calculation of uniform crime rates by years at risk and it is not confounded by multiple crimes committed on a given day.

Lifetime Criminality Since Onset of Opiate Addiction

The total number of crime-days accumulated by each of the 243 addicts during his years at risk was tabulated. Almost two-thirds of the sample had more than 1,000 crime-days per individual; almost one-quarter (23 percent) had more than 3,000 crime-days per individual. The mean number of crime-days for the 237 addicts who had at least one crime-day was 1,999. This addict sample, then, averaged some 2,000 crime-days during an 11 year risk period.

The total amount of days during which crime was committed by these 243 addicts during their years at risk was 473,738. This total of almost one-half million crime-days is clearly an under-enumeration of their offenses as multiple crimes during a crime-day were common. It is also pertinent to note that drug use or possession were not classified as crimes in this study.

It was found that the 237 addicts who had committed crimes could be classified into nine types of criminal careers. These nine were: daily theft, daily drug sales, other daily crime; weekly theft, weekly drug sales, weekly other crimes; infrequent theft, infrequent sales and infrequent other crimes. Some two-thirds of the 237 addicts had theft as their principal type of crime.

The Impact of Addiction Upon Criminal Careers

The extent of criminality among all nine career types was affected by their addiction status. Thus, there was an overall six-fold increase in the number of crime-days per year at risk during addiction as contrasted with the abstinent periods. When addicted, the 237 male addicts committed one or more crimes during 248 days per year; when not addicted, they had only 41 crime-days per year.

Lifetime Arrests and Incarceration of the 237 Addicts

Most of the 237 addicts had been arrested several times and spent time in prison. The average number of arrests since onset of addiction was 12 and the average number of imprisonments was three. The probability of arrest for the entire sample was low as less than one percent of their crime-days was marked by arrest. To be exact, the 237 addicts had 2,869 arrests and 473,738 crime-days (i.e., probability = .0061). The fact that crimes against property predominated in this addict sample should not be taken to mean that crimes of violence were absent. For most of the addicts had comitted numerous crimes of violence (mostly assault and robbery) and 60 percent of the sample had been arrested for such crimes. Indeed, 12.4 percent of their total arrests were for violent crimes.

Estimating the Annual and Lifetime Criminality of Heroin Addicts in the United States

The research findings concerning the criminality of a representative sample of Baltimore addicts provides a means for estimating the extent of crimes committed by addicts throughout the United States. In this regard, we take the position that it is worthwhile to provide an initial estimate of the extent of criminality within this population once adequate data is available. It is worthwhile both with respect to furthering our understanding of crime and drug addiction as national problems and with respect to developing our research methodology for such measurement.

It is pertinent to comment upon the representativeness of the Baltimore sample with respect to the U.S. population of opiate addicts. There is reason to maintain that this Baltimore sample is generally similar to the U.S. addict population insofar as most relevant variables are concerned. In developing our estimate of the extent of criminality among heroin addicts in the United States, we are referring to a population of 450,000 addicts. This figure was derived by The Strategy Council on Drug Abuse and published in the 1979 Federal Strategy for Drug Abuse and Drug Traffic Prevention. This figure can, of course, be updated without effecting the other parts of the crime estimation procedure.

Estimation of Annual Criminality, Male-

The factors involved in this calculation are:

A. That male opiate addicts commit at least one crime on 178 days per year at risk (i.e., crime-days per year at risk = 178.5).
B. That these addicts are not at risk 32 precent of their careers (i.e., incarceration time = 31.7 percent).
C. That there are approximately 450,000 addicts in the United States; that 76.7 percent of these are male and 23.3 percent female.
Then, using a simple multiplicative estimation approach, Crime-Days for males = 178.5 x .683 x 345,150 = 42,080,688 crime-days per calendar year.

Lifetime Criminality of U.S. Heroin Addicts

On a lifetime basis - conservatively calculated as lasting only 16 years from onset of addiction - it is estimated that this male population of 345,000 addicts commits crimes on over 689,000,000 days. We regard these estimates as a lower bound because of the shortened risk period and the fact that multiple offenses per day are frequent but not counted in the crime-day measurement. The estimation of the lifetime criminality of female addicts follows the same procedure as for males, except that their crime rate is lower and they have less time incarcerated.

The lifetime criminality for the 450,000 heroin addicts in the United States is, then, the sum of the total crime-days for the 345,150 males and the 104,850 females, or 819,868,700 crime-days.

CONCLUSION:

This study has established that most heroin addicts are deeply enmeshed in a criminal lifestyle which involves the commission of thousands of offenses per individual after the onset of their opiate use. The extent of criminality within the addict population of the United States is staggering. Our estimation is that the 450,000 heroin addicts commit over 50 million crimes per year. And furthermore, that during an 11 year risk period, while they are on "the street", these male addicts are responsible for committing some 700 million crimes.

Based on our research findings, it seems that there is a pressing need to address the problem by informing the public and its leaders about the extent and continuity of crime among heroin addicts. For no significant action can occur until the public recognizes the problem for what it s. And this is not to deny that other problems in society exist. Quite the contrary. For it may well be that control and reduction of the crime-drug problem is a prerequisite for addressing many other social issues.

ANNUAL AND LIFETIME CRIMINALITY OF HEROIN ADDICTS IN THE UNITED STATES

By John C. Ball, Lawrence Rosen, John A. Flueck and David N. Nurco

John C. Ball, Ph.D., Professor (in Sociology), Department of Psychiatry, Temple University School of Medicine

Lawrence Rosen, Ph.D., Associate Professor of Sociology,
Temple University

John A. Flueck, Ph.D., Professor of Statistics
Temple University

David N. Nurco, D.S.W., Chief, Social Research and Professor,
Department of Psychiatry, University of Maryland School of Medicine

Abstract

A probability-based sample of 243 addicts was selected for study from a Baltimore population of 4,069 male opiate addicts. The sample was interviewed and their criminal history was traced in detail over an 11 year risk period during which they were "on the street". It was found that these 243 heroin addicts had committed more than 473,000 crimes. As measured by crime-days, the average addict committed over 178 offenses per year and almost 2,000 offenses during his post-onset lifetime. Although the predominant offense committed was theft (as with most populations of criminals), these addicts were also involved in a wide range of other crimes: drug sales, robbery, forgery, pimping, assult, and murder. The implications of these findings are discussed with respect to the impact of arrest and incarceration upon the lifetime criminality of these addicts.

These research results provide a means for estimating the extent of criminality among heroin addicts throughout the United States. Our calculations indicate that the 450,000 heroin addicts in the United States commit more than 50,000,000 crimes per year and that their lifetime criminality exceeds 819,000,000 offenses.

The Research Problem and Scope of the Study

There has been a long and continuing controversy about the relationship of crime and opiate addiction in the United States (Terry and Pellens, 1928; Lindesmith, 1968; Musto, 1973; Inciardi, 1981). This controversy has involved disagreement about the etiology of the problem, the extent of crimes committed by addicts, the seriousness of their crimes, the prevalence of violent crimes, the effect of control legislation, the efficacy of treatment, and similar issues. Although this controversy is unlikely to end in the near future (because it is fueled by diverse theoretical and political viewpoints as well as by competing vested institutional interests), it is important to divorce the scientific aspects of the problem from other considerations so that research can address and resolve specific questions. In the present study, research attention is focused upon the extent and characteristics of crimes committed by heroin addicts.

In pursuing the research problem of determining the annual and lifetime extent of criminality among heroin addicts, a series of methodological issues were addressed. First, it was decided to utilize a probability based sample of a well-defined Baltimore addict population in the study because of the availability of comprehensive follow-up data on this representative sample of 243 male addicts. Second, the extent of crimes committed by the addict sample was analyzed by means of a new measure of criminal behavior: crime-days per year at risk. Third, the results of interview data were supplemented by use of official records pertaining to arrests and periods of incarceration. Fourth, the validity of the interview data was intensively reviewed and subjected to separate investigation. Fifth, it proved to be feasible to analyze the entire time span from onset of opiate addiction to time of interview for each addict in the sample. Sixth, important within group differences in criminality, addiction and incarceration were observed for the sample and analyzed. And seventh, an initial national estimate of the extent of criminality among heroin addicts was derived.

Before proceeding to discuss the data collection procedures and research findings, it is pertinent to comment upon the scope of this study. We have directed our research attention and analysis to the extent of criminality among opiate addicts. We have not considered the issue of etiology, nor have we investigated those factors which might lead to a cessation of crime or addiction, nor have we addressed policy questions concerning prevention, control and treatment. We recognize that these and other issues are important but we believe that they can best be considered after the question of the extent of on-going criminality within the addict population has been delineated and analyzed.

The Sample and Follow-Up Interview Procedure

This paper is based on interview data and collateral records pertaining to 243 Baltimore opiate addicts (most were heroin addicts). The 243 male addicts were a random sample selected from a population of 4,069 known opiate users arrested (or identified) by the Baltimore Police Department between 1952 and 1971. The sample was unselected for criminality, but stratified by race and year of police contact. Of the 243 subjects, 109 were white and 134 were black. Analysis of race and cohort differences has been undertaken elsewhere (Nurco and DuPont, 1977).

The selecton of the sample of 243 was accomplished as follows. The initial sample drawn from the police files consisted of 349 individuals, but 57 of these had died by the time of follow-up interview, 2 were in mental hospitals (for psychosis), 6 were unlocated and 17 refused to participate in the study. Thus, 92 percent of the sample who were alive and not in mental institutions were interviewed (i.e., 267 of 290 subjects). Of the 267 addicts who were interviewed, 14 claimed never to have been regular users of opiates, 3 used opiates regularly for only one or two months and the onset of one preceded everyone in the sample by 22 years; these 18 were excluded. In addition, a careful review of the remaining 249 cases revealed that 6 interviews had significant discrepancies between their self-reports and FBI records; these 6 were eliminated. (These six claimed no criminal behavior, but their arrest record listed two or more non-drug offenses). The remaining sample consisted of 243 cases.

Each of the 243 addicts was interviewed between July 1973 and July 1974 by specially trained interviewers who were familiar with the Baltimore addict subculture. The interview lasted some three hours and the questions were focused upon six topics: drug use, criminal behavior, work, living arrangements, drug selling, and sources of income.

The interview schedule consisted of six parts: (1) Life-time prevalence of drug use by specific drugs of abuse (7 pages, completion time about 30 minutes); (2) History of opiate use by addicted and abstinent periods during risk years (3 pages, 30 minutes to complete); (3) Preaddition criminality and circumstances of onset of opiate use (7 pages; 30 minutes); (4) Circumstances of first regular use of opiates (i.e., daily use for a month or longer) and drug history during each subsequent addiction period. This part includes information on criminality for each period of regular opiate use or abstinence (10 minutes for each addiction period; 7 pages each); (5) Marital history, parental background, juvenile delinquency, military service, treatment history, incarceration history, criminal history (16 pages; 60 minutes to complete); (6) Interviewer's rating of respondent's attitude, appearance and overt responsiveness (1 page; 5 minutes).

Since a major focus of the lengthy interview was to obtain detailed chronological data pertaining to addiction status from onset of regular opiate use to time of interview, each subject was asked to describe in detail his various addiction, abstinence and incarceration periods. For the entire sample, there were 2,340 such time periods; 1,022 were addiction periods, 488 were abstinence periods, 700 were jail or prison time periods, 52 were hospitalization periods and 78 periods were unclassified because of insufficient data. (These few unknown periods were omitted from further analysis). Each subject was asked about his daily and weekly use of specific drugs during each addiction period (dosage, multiple use, times used per day or week). In this manner, each subject's years, months and days at risk was classified as addicted to or abstinent from opiates. In a similar way, each subject was asked to recount his legal and illegal sources of income during each time period. With respect to criminality, this involved an enumeration of specific offenses committed on a daily, weekly, or monthly basis during each addiction or abstinent period (number and type of offenses committed per day and week). In this manner, the types of crimes committed and the number of crime-days amassed for each subject was recorded.

The validity of the interview data obtained from these 243 addicts has been the subject of a separate study (Bonito, Nurco and Shaffer, 1976). In comparing addicts' self-reports with official records, it was found that the subjects were more accurate and more candid than police files and juvenile delinquency files on some items, but that they often miscalculated the exact year of such formal items as year of first arrest (booking) or year of first conviction. With respect to these latter items, it was noted that they often underestimated or overestimated the date of occurrence by a single year. The authors of the validity study conclude that there was no evidence of conscious distortion on the part of these addicts; there was no indication of a tendency to either cover-up (or deny) their criminal behavior, or conversely to exaggerate their criminality. The findings of this study substantiate the conclusions of prior research concerning the validity of interview data obtained from opiate addicts - namely, that valid data can be obtained if specially trained interviewers who are familiar with the local addict subculture are employed and adequate safeguards exist concerning the confidentiality of the information provided (Johnston, Nurco and Robins, 1977). In addition to the lengthy face-to-face interviews conducted with each of the 243 addicts, comprehensive arrest, penal, hospital and other institutional data was obtained with respect to the addicts lifetime experiences.

A New Measure of Criminal Behavior: Crime-Days Per Year at Risk

In the present paper, a new measure of criminal behavior is employed: Crime-Days Per Year at Risk. A crime-day is a 24-hour period in which an individual commits one or more crimes. The number of crime-days per year at risk refers to the number of days per year that an individual has committed crimes from 0 to 365.

This new measure, Crime-Days Per Year at Risk, was found to have unique analytical power as it permits the calculation of uniform crime rates by years at risk and it is not confounded by multiple crimes committed on a given day. Furthermore, the term Crime-Days Per Year at Risk appears to be an effective procedure for explaining the extent of continual criminal behavior because it relates the number of crimes committed by individuals to a common frame of reference - times per year. The relevant terms have been defined as follows:

> Crime-Day. A crime-day is defined as a 24-hour period during which one or more crimes is committed by a given individual. Each day of the year, then, is either a crime-day or a non-crime day.
>
> Heroin Addiction. This term refers to the daily use of opiates. (Daily use is defined as use during at least four days per week for a month, or longer.)
>
> Average Crime-Days Per Year. This measure is defined as the average number of Crime-Days Per Year at Risk for a given individual. The range is from 0 to 365. Thus, an individual with 1,489 crime-

days during a seven year risk period has an average Crime-Days Per Year at Risk of 213. (Actual computation is by days at risk and number of crime-days).

Years at Risk. Years at Risk is the number of years an individual is "on the street" or not incarcerated. It is calculated on a cumulative basis by subtracting jail, prison, and hospital time from the years since onset of regular opiate use to time of interview.

Principal Type of Crime. This is the predominate type of crime engaged in by a given individual during his years at risk, as theft (boosting, burglary, etc.), con games, robbery, gambling, drug sales, etc. This principal type of criminal behavior is the most common offense committed from a crime-day viewpoint.

Criminal Career. This is the criminal behavior pattern which an individual has followed while at risk. The two main elements in determining the crime pattern are (a) type of crime and (b) frequency of crime. Examples of crime patterns are: daily theft, daily con games, weekly robbery, weekly forgery, infrequent assault, and so forth. In each case, the crime pattern, or career, is the most common, or usual, offense committed during the subject's years at risk and the frequency of commission.

In order to obtain answers to the criminological questions advanced, the study was organized according to the following procedures: (1) A sample of 243 male opiate addicts was selected for study, (2) Periods of addiction and periods of abstinence from opiate dependence were enumerated, (3) The number of crime-days per year at risk was determined for each member of the sample, (4) The addicts were classified by principal type of criminal career pursued from onset of regular opiate use to interview, (5) The extent of crimes committed were analyzed by criminal career types. (6) The sample was separated into thirds on the basis of crime-days and criminality related to arrest and periods of incarceration; and (7) Annual and lifetime estimates of criminality among heroin addicts in the United States were calculated.

Lifetime Criminality Since Onset of Opiate Addiction

The total number of crime-days accumulated by each of the 243 addicts during his years at risk is tabulated in Table 1. Almost two-thirds of the sample had more than 1,000 crime-days per individual; almost one-quarter (23 percent) had more than 3,000 crime-days per individual. The mean number of crime-days for the 237 addicts who had at least one crime-day was 1,999. This addict sample, then, averaged some 2,000 crime-days during an 11 year risk period.

(Table 1 about here)

The total amount of days during which crime was committed by these 243 addicts during their years at risk was 473,738. This total of almost one-half million crime-days is clearly an under-enumeration of their offenses as multiple crimes during a crime-day were common. It is also pertinent to note that drug use or possession were not classified as crimes in this study.

In estimating the lifetime criminality of these 243 male addicts, one could project additional crime-days from the time of interview to old age or death. If this were done, several hundred thousand additional crime-days would be added to the present figure (i.e., 473,738) to account for crime committed in future years. Inasmuch as the addicts of the sample had a mean age of only 36 years and were still active in their criminality, it is evident that the future extent of their criminality would be considerable.

Nonetheless, we have decided not to project the future criminality of this sample in our analysis. Although such a projection would provide a more realistic (and higher) total of the lifetime extent of crimes committed by these addicts, it seems more prudent to restrict our analysis to the years at risk during which we have adequate data. Therefore, we are defining "lifetime criminality" for purposes of this study as crimes committed from onset of opiate use to time of interview; this is an average 11 year risk period during which the addicts were "on the street".

The total enumeration of crime-days presented in Table 1 is based upon different risk periods for the 243 addicts. This is because each addict's risk period, or years "on the street", was determined by his age at onset, amount of time incarcerated (which was subtracted) and age at interview. Consequently, although most of the sample had 10 or more years of "street" time (N = 198), there were 37 who had from 5 to 9 risk years and 8 who had from 2 to 4 risk years.

Annual Extent of Criminality for the 243 Addicts

The extent of criminality within this sample of 243 addicts on an annual basis is presented in Table 2. The measure of criminality employed is the number of crime-days accumulated by each addict per year at risk. This measure - crime-days per year at risk - controls for the differential risk periods and, therefore, provides a yearly rate of criminality for this sample.

(Table 2 about here)

Most of the addicts were continually engaged in a high level of crime during their years at risk. Thus, two-thirds of the 243 addicts committed over 100 crimes every year they were on the "streets". And one-fifth committed over 300 crimes every year since they became addicted. The mean number of crime-days per year at risk for this sample was 178. That is, the average addict in this sample amassed 178 crime-days every year while at risk.

There were, however, important variations in crime rates within this sample (Table 2). Thus, in addition to the high crime rate subjects who had 100,200 or 300 crime-days per year, there was a smaller group who were much less involved in crime. Seventy-eight of the sample had less than 100 crime-days per year and 17 of these had either no crime-days or less than one a year. These differences in criminality within the sample will be analyzed further below.

Criminal Careers of the 243 Addicts

Each of the 243 addicts were classified as to the common criminal career which he had followed since onset of regular opiate use. These criminal career types were determined on the basis of the principal, or most common, type of crime committed, and secondly, on the frequency of commission - whether daily, weekly or less often. Six of the 243 addicts had committed no crimes during their risk periods.

It was found that the 237 addicts who had committed crimes could be classified into nine types of criminal careers. These nine were: daily theft, daily drug sales, other daily crime; weekly theft, weekly drug sales, weekly other crimes; infrequent theft, infrequent sales and infrequent other crimes. (Table 3). Some two-thirds of the 237 addicts had theft as their principal type of crime. Of these 156 who were career thieves, 41 engaged in daily theft during their year at risk, 58 engaged in weekly theft and 57 in infrequent theft.

The selling of drugs was the second most favored type of crime committed by these addicts; 45 were principally engaged in selling drugs, or "dealing". Of the 45 dealers, 13 pursued this crime on a daily basis, 18 on a weekly basis and 14 on an infrequent basis.

The remainder of the sample were engaged in committing other types of crimes on a daily, weekly or infrequent basis. Of these 36, only 7 were engaged in daily crime, 7 in weekly crime and 22 in infrequent crimes. Confidence games, forgery, gambling and procuring (pimping) were the principal types of crime committed by these 36 addicts.

The classification of the sample into nine criminal career types somewhat obscures the fact that many addicts engaged in more than one type of crime during their years at risk. This situation is especially notable with regard to the 61 addicts who were daily criminals. Thus, 55 of the 61 had engaged in theft durng their years at risk and 43 had engaged in some dealing, although only 13 had this as their principal daily criminal activity. In addition to theft and dealing - the two most common types of crime - 33 of the 61 had engaged in other crimes, such as forgery, gambling, confidence games, robbery and pimping. The complete list of all crimes reported by these 61 daily criminals during their years on the street is: theft (this includes shoplifting; "cracking shorts", burglary and other forms of stealing), dealing, forgery, gambling, confidence games (flim-flam, etc.), pimping, abortionist, assault, mugging, robbery, and armed robbery.

The Impact of Addiction Upon Criminal Careers

The extent of criminality among all nine career types was affected by their addiction status. Thus, there was an overall six-fold increase in the number of crime-days per year at risk during addiction as contrasted with the abstinent periods (Table 3). When addicted, the 237 male addicts committed one or more crimes during 248 days per year; when not addicted, they had only 41 crime-days per year (for a detailed analysis of this relationship, see Ball et al., 1981). Although the extent of criminality within this addict sample was notably increased when the subjects were addicted to opiate drugs, the non-addicted crime rate was still quite high. As might be expected, the highest crime rates when not addicted were found among the three criminal career types who had the highest crime rate when addicted (daily theft, daily sales and daily other crimes). In these three career types, the addicts committed crimes from one to three days per week when not addicted (for these three groups, the rates per year at risk were 109.7, 88.3 and 151.0). In considering the rates of criminality for the nine career types when abstinent from opiates, it seems significant that these nine rates vary more (from 2.3 to 151.0) than do the rates when these same subjects are addicted. In a sense, then, one effect of opiate addiction is to raise the number of crimes committed to a threshold, or support, level, and this occurs for all nine career types. Thus, when addicted, 7 of the 9 career types commit more than 260 crimes per year and none of the nine career groups fall below 100 crime-days per year at risk.

Lifetime Arrests and Incarceration of the 237 Addicts

In order to ascertain the likelihood of arrest and incarceration for these Baltimore addicts and to relate these events to the extent of their criminality, the sample was separated into three equal groups on the basis of crime-days per year at risk. Group A, of 79 addicts, was the highest in criminality; their crime-days per year at risk was from 241 to 365. Group B, also of 79 addicts, was the middle classification with respect to criminality; their crime-days per year at risk were from 113 to 240. Group C was lower in criminality; their crime-days per year at risk was from 1 to 112. The six addicts without crime-days were excluded from this analysis.

(Table 4 about here)

With respect to age at interview and years at risk, the three groups were quite similar. Thus, Groups A, B and C were not significantly different in these regards (Table 4). With regard to age at onset, however, both Group A and B had an earlier age at onset than Group C. Thus, there is an association between early onset and increased criminality within this sample. In addition, the higher crime groups had a smaller white representation.

Most of the 237 addicts had been arrested several times and the likelihood of arrest differed by their involvement in crime. But the association is complex and liable to misinterpretation, as will be seen.

First, with respect to their total arrests for whatever offense, there were significant differences among the three groups. Group A had the highest number of arrests (mean = 14.4), Group B had the second highest (mean = 12.8) and Group C the lowest (mean = 9.1). But total arrests include both drug possession arrests as well as others, so further analysis is indicated.

Although drug possession arrests were not the principal type of arrest for the sample, such arrests were common with most of the addicts having some 3 or 4 drug arrests. The likelihood of such arrests, however, did not differ significantly among the three groups.

The three groups did differ significantly with respect to arrests for non-drug offenses and violent crime offenses. The non-drug arrests (i.e., mostly theft) were almost twice as frequent among Group A as among Group C (11.0 vs. 6.0); Group B was intermediate with respect to the number of non-drug arrests (mean = 9.2)

A similar association between arrests and the extent of criminality was found with respect to arrests for violent crime. Group A was highest with a mean of two such arrests per addict; Group B was intermediate with 1.4 arrests per addict; and Group C was lowest with a mean of one arrest for violent crime per addict. These group differences were statistically significant.

During the years from onset of opiate use to time of interview (an average period of 16.4 years) few of the addicts had been hospitalized for their drug abuse but most had spent considerable time in prison. With respect to hospitalization, only 16 percent had such hospital periods and the frequency of these periods did not differ among the three groups. With respect to prison periods, 88.8 percent of the 237 addicts had one or more such periods and the frequency of imprisonment was related to criminality. Thus, Group A had almost twice as many prison periods as Group C and Group B was intermediate in the number of imprisonments. (A = 3.9, B = 2.9, C = 2.0). These differences were significant.

Two further observations about arrests within these three groups are relevant. The first refers to the probability of arrest and the second concerns arrests for violent crimes.

The probability of arrest for the entire sample was low as less than one percent of their crime-days was marked by arrest. To be exact, the 237 addicts had 2,869 arrests and 473,738 crime-days (i.e., probability = .0061). But even this low overall probability of arrest was influenced by the extent of criminality; arrests were less likely (per 100 crime-days) as the number of crimes increased. Thus, the probability of arrest for Group A, the high crime group, was .0041 while that of Group B was .0070 and that of Group C was .0176 percent. The liklihood of arrest, then, was over four times as great (per 100 crime-days) among those addicts in Group C than in Group A.

Lastly, the fact that crimes against property predominated in this addict sample should not be taken to mean that crimes of violence were absent. For most of the addicts had committed numerous crimes of violence (mostly assault and robbery) and 60 percent of the sample had been arrested for such crimes. Indeed, 12.4 percent of their total arrests were for violent crimes (see also Chambers, 1974).

Estimating the Annual and Lifetime Criminality of Heroin Addicts in the United States

The research findings concerning the criminality of a representative sample of Baltimore addicts provides a means for estimating the extent of crimes committed by addicts throughout the United States. Before proceeding to this estimation procedure, however, several introductory comments are warranted.

First, we take the position that it is worthwhile to provide an initial estimate of the extent of criminality within this population once adequate data is available. It is worthwhile both with respect to furthering our understanding of crime and drug addiction as national problems and with respect to developing our research methodology for such measurement. In this latter regard, we hold that it is desirable to advance an estimate as soon as feasible.

Secondly, it is pertinent to comment upon the representativeness of the Baltimore sample with respect to the U.S. population of opiate addicts. Although one could prepare a treatise on this topic (and we are quite aware that the population of opiate addicts is not homogeneous and not unchanging, see Ball and Chambers, 1970), there is reason to maintain that this Baltimore sample is generally similar to the U.S. addict population insofar as most relevant variables are concerned. For example, in a criminological study (Ball et al, 1975) of 42,293 drug abuse patients throughout the United States, it was found that 86.3 of the males had been arrested one or more times, that 50.4 percent had been arrested four or more times, that 18.2 percent had over 10 arrests; that 54.3 percent had been in jail or prison, that 32.5 percent had been incarcerated for more than a year, and that 19.6 percent had been incarcerated for more than three years prior to treatment. These arrest and incarceraton figures are comparable to those of the Baltimore sample, especially when it is recognized that the national data refer to a younger population.

In developing our estimate of the extent of criminality among heroin addicts in the United States, we are referring to a population of 450,000 addicts. This figure was derived by The Strategy Council on Drug Abuse and published in the 1979 Federal Strategy for Drug Abuse and Drug Traffic Prevention. This figure can, of course, be updated without effecting the other parts of the crime estimation procedure.

ESTIMATION OF ANNUAL CRIMINALITY, MALE-

The factors involved in this calculation are:

A. That male opiate addicts commit at least one crime on 178 days per year at risk (i.e., crime-days per year at risk = 178.5)

B. That these addicts are not at risk 32 percent of their careers (i.e., incarceration time = 31.7 percent)

C. That there are approximately 450,000 addicts in the United States; that 76.7 percent of these are male and 23.3 percent female. (the proportions by sex are from Ball et al., 1975)

# Then, using a simple multiplicative estimation approach, Crime-Days for males = 178.5 x .683 x 345,150 = 42,080,688 crime-days per calendar year.

Although female addict criminality can not be derived from the Baltimore data directly, a rough estimate of this lower rate is that it is 50 percent less than for men (based on lower arrest rates) and also some 50 percent less incarceration time (see Tables IV & VI in Ball et al., 1975). Based on these considerations, the number of crime-days per year for the 104,850 U.S. female addicts correspondingly is: 89.25 x .842 x 104,850 = 7,879,477 crime-days per calendar year.

LIFETIME CRIMINALITY OF U.S. HEROIN ADDICTS

This estimation involves the following:

A. That male opiate addicts commit crimes on 178 days per year at risk (i.e., 178.5 crime-days per year at risk).

B. That these addicts have an active average lifetime of 16.4 years from onset of opiate addiction to time of interview (this period is defined as their lifetime for purposes of calculation); that of these 16.4 years, 11.2 years are "street" time and 5.2 years are prison time. (or 31.7%).

C. That there are approximately 450,000 addicts in the United States; that 76.7 percent of these are male and 23.3 percent female.

# Then, lifetime crimes for male addicts = 178.5 x 11.2 x 345,150 = 689,954,850 total crime-days.

Based on our research findings of the extent of crime committed by Baltimore heroin addicts, we have derived an estimate of the crimes committed by the 450,000 heroin addicts in the United States. It is estimated that the 345,000 male addicts commit 42 million crimes per year. The smaller population of female addicts commit almost 8 million crimes per calendar year.

On a lifetime basis - conservatively calculated as lasting only 16 years from onset of addiction - it is estimated that this male population of 345,000 addicts commits crimes on over 689,000,000 days. We regard these estimates as a lower bound because of the shortened risk period and the fact that multiple offenses per day are frequent but not counted in the crime-day measurement.

The estimation of the lifetime criminality of female addicts follows the same procedure as for males, except that their crime rate is lower and they have less time incarcerated (and hence more years at risk). Again, calculating their crime-days at 50 percent of the male rate (or 89.25 crime-days per year at risk) and their incarceration time as 50 percent less (or only 2.6 years of the 16.4 years), then: Female Lifetime Criminality = 89.25 X 13.8 (years) X 104,850 = 129,913,850 total crime-days.

The lifetime criminality for the 450,000 heroin addicts in the United States is, then, the sum of the total crime-days for the 345,150 males and the 104,850 females, or 819,868,700 crime-days.

X. Conclusion

This study has established that most heroin addicts are deeply enmeshed in a criminal lifestyle which involves the commission of thousands of offenses per individual after the onset of their opiate use. The extent of criminality within the addict population of the United States is staggering. Our estimation is that the 450,000 heroin addicts commit over 50 million crimes per year. And furthermore, that during an 11 year risk period, while they are on "the street", these male addicts are responsible for committing some 700 million crimes.

These estimates are based upon a long-term follow-up study of a probability-based sample of Baltimore opiate addicts. In this study each of the addicts was interviewed with respect to his criminality and collateral information was obtained from official records. The extent of criminal behavior was determined by means of a new measure: crime-days per year at risk. Use of this measure has made it possible to derive national estimates of criminality. We believe that our estimates of criminality are conservative.

In addition to finding that two-thirds of our addicts were rather continuously involved in criminal behavior (i.e., committing offenses from 113 to

365 days per year at risk), it was observed that their offenses included both crimes against property and violent crimes. Most of the sample were repeatedly involved in both property offenses and violent offenses. Thus, 86 percent had been arrested one or more times for theft and 60 percent had been arrested one or more times for crimes of violence. (These arrest figures, of course, grossly underestimate the extent of these two types of criminality as the probability of arrest was exceedingly low.) These findings are of particular significance inasmuch as there has been a growing concern about violent crime, and especially "street" crime, in the United States. In this regard, our results indicate that it may be unrealistic to attack violent crime as an entity, for to a large extent it overlaps with other types of criminal behavior.

Lastly, with respect to the research findings, it should be noted that most of the addicts followed over the years in our study had been arrested numerous times and had spent considerable time in prison. But their frequent arrests (12 per addict) and periods of incarceration (3 per addict) had little noticeable effect on their criminal careers. For most continued their high level of criminality year after year despite arrests and incarceration; in fact, the number of arrests and periods of incarceration was directly related to the extent of their criminality. Indeed, the continuity and persistency of the addicts' criminal behavior stands out as a major conclusion of the study. In this regard, one is inclined to agree with a statement by Frank Tannebaum in his Foreward to New Horizons in Criminology: "What to do with the professional criminals is a problem sufficient to tax the best thought of the community".

What to do: First and foremost, it is time to face the reality of the problem. For the fact is that heroin addicts are responsible for the commission of millions of crimes per year in the United States and many of these offenses are of a serious nature. Given these realities, it seems strange indeed to find that a fundamental controversy about the criminality of addicts continues. In this regard, a recent author has taken the position that nothing can be done about this problem because our knowledge is incomplete. Thus, Silberman states that neither drug abuse nor crime can be reduced because "we simply do not know how large that contribution [of heroin to crime] is, or what the posseses are through which drug abuse contributes to crime".

Without commenting upon the inadequacy of particular arguments about what [illegible] not be done about crime, and without reviewing the significant advances which have been made in criminological research concerning crime rates (e.g., Fienberg and Reiss, 1980; Hindelang, 1981), let it suffice to say that there is a pressing need to address the problem by informing the public and its leaders about the extent and continuity of crime among heroin addicts. For no significant action can occur until the public recognizes the problem for what it is. And this is not to deny that other problems in society exist. Quite the contrary. For it may well be that control and reduction of the crime-drug problem is a prerequisite for addressing many other social issues.

Table 1. Total Crime-Days Amassed By 243 Male Addicts During Years At Risk

Crime Days	Number of Addicts	Percent of Addicts
0 (None)	6	2.5
1-99	20	8.2
100-499	31	12.8
500-999	31	12.8
1,000-1,999	54	22.2
2,000-2,999	46	18.9
3,000-3,999	27	11.1
4,000-4,999	12	4.9
5,000-5,999	10	4.1
6,000-9,450	6	2.5
Total	243	100.0

Total Crime-days since onset of addiction: 473,738
Mean Crime-days per addict: 1,998.9

Table 2. Crime-Days Per Year At Risk For 243 Male Addicts

Crime-Days Per Year at Risk	Number of Addicts	Percent of Addicts
No Crime-Days	6	2.5
Less than 1 per yr.	11	4.5
1-49	35	14.4
50-99	26	10.7
100-149	31	12.8
150-199	32	13.2
200-249	25	10.3
250-299	26	10.7
300-349	28	11.5
350-365	23	9.5
Total	243	100.0

Mean Crime-Days Per year at risk: 178.5

Table 3. Crime-Days Per Year At Risk By Type Of Criminal Career And Addiction Status

Crime Career Type	Number of Addicts	Crime-Days Per year at Risk	Crime-Days Per Year at Risk: addicted	abstinent
1. Theft-daily	41	330.3	347.7	109.7
2. Sale of Drugs-daily	13	328.0	353.2	88.3
3. Other Crimes-daily	7	319.4	341.4	151.0
4. Weekly Theft	58	189.6	280.9	23.3
5. Weekly Sale of Drugs	18	181.1	284.0	27.6
6. Weekly, other crimes	7	201.9	297.0	70.1
7. Infrequent Theft	57	72.4	140.7	7.4
8. Infrequent Sales	14	102.4	260.9	10.5
9. Infrequent, other crimes	22	46.8	108.2	2.3
- No Crime	6	-----	-----	-----
Total:	243	178.5	248.0	40.8

Table 4. Lifetime Arrest and Incarceration of the 237 Addicts

Variables	Classified by Crime-Days Per year at Risk				
	A. Highest Third (241-365)	B. Middle Third (113-240)	C. Lowest Third (1-112)	Total (N=237) (1-365)	P-Values* (Dif. in Groups)
I. Age, Risk Years and Race:					
1. Age at onset (mean)	18.6	18.9	20.8	19.4	(.00)
2. Age at interview (mean)	35.0	35.1	37.4	35.8	(.31)
3. Years at risk (mean)	11.0	10.4	12.2	11.2	(.13)
4. White (percent)	26.6	46.8	58.2	43.9	(.00)
II. Arrests:					
5. Total arrests	14.4	12.8	9.1	12.1	(.00)
6. Drug Pos. Arrests (mean)	3.4	3.6	4.2	3.7	(.66)
7. Non-Drug Arrest (mean)	11.0	9.2	6.0	8.7	(.00)
8. Violent Crime Arrests, (mean)	2.0	1.4	1.0	1.5	(.01)
III. Incarceration:					
9. Hospital Periods (mean)	0.2	0.2	0.2	0.2	(.51)
10. Prison Periods (mean)	3.9	2.9	2.0	2.9	(.00)

*P-Values of differences among the three groups are based on the Kruskal-Wallis Test.

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Senator SPECTER. Thank you very much, Dr. Nurco. Thank you, Dr. Ball.

I would like to turn now to Dr. Peter Greenwood, a graduate from the U.S. Naval Academy in 1961, M.S. and Ph. D. in industrial engineering from Stanford, a student at Loyola Law School since 1969, the associate head of management sciences from the Rand Corp., and he has published extensively on sentencing policy, habitual offenders, and the juvenile court system.

Welcome, Dr. Greenwood. We are pleased to have you here today. Thank you for coming. We will be pleased to hear your testimony.

STATEMENT OF DR. PETER GREENWOOD, SENIOR RESEARCHER, THE RAND CORP., SANTA MONICA, CALIF.

Mr. GREENWOOD. Mr. Chairman, it is an honor to be here today and appear before this committee.

The research findings I will be presenting are based upon 6 years of research by the Rand Corp., for which I was the principal investigator, which attempts to accurately measure the criminal activities of adult offenders and to identify the characteristics of high-rate offenders.

This work has been supported by the National Institute of Justice. The studies began with interviews of 49 robbers in California prisons. A later study involved a survey of 625 California prison inmates, and finally a recent study that is just now being written up, to be published in December or January of next year, involves 2,400 jail and prison inmates in California, Michigan, and Texas.

I have submitted written testimony that describes these studies. I would like to summarize it now in seven points:

First, the connection between prosecution and sentencing policies and crime rates is incapacitation. We apparently cannot rehabilitate. We do not send prisoners to prison to make them better people. They will or will not recidivate no matter what we do with them.

We do not know if there is deterrence. The research on this is ambiguous. We certainly cannot tell whether juveniles, young adults, or older adults are more easily deterred. The only thing we know is that while they are incarcerated, they are not committing crimes.

My second point: Incapacitation effects are dependent upon individual crime rates. The more effective we can be in identifying who the high-rate offenders are, and making sure that those are the ones who go to prison and get the longer terms, the more crime we will prevent for any given incarcerated population.

Point No. 3, and a very important one: Offenders vary tremendously in the number of crimes they commit. Most offenders commit crimes at fairly low rates. Here I am talking about crimes of burglary, robbery, or other crimes against the person. Most offenders we interview in prison were doing those crimes at five or less per year. It is only a small fraction, I would say roughly 10 percent——

Senator SPECTER. Did you interview any drug addicts?

Mr. GREENWOOD. Yes, a lot of drug addicts.

Senator **Specter**. There may be some disagreement between your statistics and those of Dr. Ball and Dr. Nurco.

Mr. **Greenwood**. I do not think so. I did not hear any breakdown about what their offenders were doing. In the studies of drug offenders I have seen——

Senator **Specter**. You are talking about 5 a year and they are talking about 110 a year.

Mr. **Greenwood**. In the research I have seen by the late Dr. McLaughlin at UCLA, a large part of the offenses of drug addicts were crimes of theft—shoplifting, boosting, and also drug sales. I am not counting those. I am starting with burglary, robbery, and more serious crimes.

Yes, these offenders do a lot of these lesser crimes, but I am talking about personal safety crimes. Most of these offenders do them at a low rate, roughly five a year. It is a small percent, 10 percent, who do up in the order of 50 or more a year.

We have found that it is possible to identify groups of offenders who on the average have the higher offense rates, particularly for robbery and burglary. The characteristics which identify high-rate burglars and robbers include obviously those who are convicted for robbery and burglary. Offenders convicted of other crimes against the person or offenders convicted of less serious crimes on the average commit robberies and burglaries at a much lower rate than those convicted of those crimes.

A second factor is, prior convictions for robbery or burglary, the factor cited in your bill.

Three, current drug addiction predicts high rates of offending.

Other factors include drug involvement as a juvenile is another additional factor, juvenile conviction before the age of 16, commitment to a State or Federal facility as a juvenile;

Incarcerated more than 50 percent of the 2 years preceding the time of the current arrest; and

Finally, unemployment more than 50 percent of the time in the preceding 2 years.

Those are eight factors. Taken together, they produce a scale which helps us identify high-rate from lesser rate offenders. Some factors found not to be associated with the rate of criminality which have sometimes been used in sentencing to increase sentences are:

Total prior convictions has nothing to do with rate of offending. The fact that someone is being prosecuted for multiple counts does not have anything to do with rate of offending. Typically it has to do with one criminal episode rather than a long string of crimes.

And prior prison terms have nothing to do with rate of offending.

The fifth point: Individual crime rates vary considerably between States, as do the best predictors of high-rate offending. For instance, in California the high-rate robbers we identified, which are roughly half the offenders in prison, commit 31 robberies per year on the average. In Texas, high-rate robbers, only 20 percent of the people, of the robbers in prison, commit 8 crimes a year.

Senator **Specter**. In what State?

Mr. **Greenwood**. I am contrasting California and Texas.

Senator **Specter**. What would be an explanation for that difference?

Mr. **Greenwood**. One thing we know is the offenders in Texas use drugs a lot less than offenders in California. That is consistent with Dr. Ball's testimony. We do not know whether it is a deterrent effect or an incapacitation effect.

We know offenders are sentenced more harshly in Texas. But whether there is something in root causes of crime which differed or whether the system suppresses it, we cannot tell now. But we know active offenders are less active in Texas than California or Michigan. Michigan was much more like California.

When it comes to sentencing now, in both California——

Senator **Specter**. But the sentencing is higher in Texas, you say?

Mr. **Greenwood**. Much higher.

Senator **Specter**. Than in Michigan or California?

Mr. **Greenwood**. Yes. Michigan is more like California.

Senator **Specter**. Are there other statistics comparing tough sentencing States with the incidence of robberies?

Mr. **Greenwood**. Pardon me?

Senator **Specter**. Do you have other statistics on the toughness of sentences as a barometer for the number of offenses?

Mr. **Greenwood**. I do not have that. There is a whole series of research that has done that, that has compared States; the deterrence studies, that show consistently that higher penalties are associated with lower rates of crime.

Senator **Specter**. But you came to the conclusion that the statistics on deterrence were inconclusive?

Mr. **Greenwood**. Right.

Senator **Specter**. Why do you come to that conclusion?

Mr. **Greenwood**. I do not come to that conclusion. The National Academy of Sciences panel came to that conclusion, the problem being competing hypotheses. You have heard about the situation in New York. That is an argument. Their crime rates are so high it saturates the system and they are prevented from making arrests, handling the cases in court, or sending people to prison.

Senator **Specter**. The National Academy came to that conclusion?

Mr. **Greenwood**. Right.

Senator **Specter**. Did you come to a conclusion?

Mr. **Greenwood**. I have reviewed their study and I agree with it. I have not independently analyzed the data.

Senator **Specter**. You do not think tough sentences are a deterrent either to the individual or to others who may have an opportunity to observe it?

Mr. **Greenwood**. Personal belief?

Senator **Specter**. Personal belief.

Mr. **Greenwood**. I believe tough sentencing has a deterrent effect. I cannot measure it. I do not know if we ever will be.

Senator **Specter**. Is or is not?

Mr. **Greenwood**. Is, I think there is a deterrent effect.

Senator **Specter**. Then you disagree with the National Academy's conclusion.

Mr. **Greenwood**. No. The National Academy says we cannot prove and we cannot measure the existence of the deterrent effect, and I agree with that. Scientifically, we cannot prove it.

Senator **Specter**. The statistics do not show it, but as a matter of your personal judgment, based on your experience in the field, you think sentencing is a deterrent?

Mr. **Greenwood**. I would believe it, yes.

OK, item No. 6. When it comes to sentencing, in both California and Michigan high-rate offenders are more likely than other offenders to be sentenced to prison rather than jail or probation, which is typically an option for burglary or robbery. This means to me that judges and prosecutors are being somewhat selective on how they sentence, depending upon their role in the sentencing process.

However, amongst prison inmates in California and Michigan, high-rate offenders do not serve longer terms, which means to me parole boards are not being selective in how they make their parole release decisions. The California sample involves people who were sentenced before determinate sentencing took effect, so their sentences were set by the parole board. In Texas the length of sentences does reflect crime rates; in other words, they are selective.

The high-rate offenders are serving substantially longer terms in Texas. This is shown in table 6 of my prepared testimony.

Finally, point No. 7, as to this bill that we are discussing here today, I have made some calculations in my testimony to show that two prior convictions for robbery or burglary does help identify high-rate offenders. I cannot say at this time what effect gun possession has as a qualification for applying this bill. But I would believe it would help identify offenders who are consistently predisposed to violence for carrying out their crimes. That is why they are carrying the weapons.

When we look—I mentioned that we had a scale to identify who high-rate offenders are, and I will just give an example. In California the low-rate robbers do on the average two crimes a year. Those with 2 priors for robbery or burglary, these are people convicted of robbery in California, do 26 robberies a year.

Our prediction scale identified high-rate offenders who do 31 robberies per year. So your two priors for robbery or burglary specified in the bill does almost as well as our scale that uses juvenile record, drug use, and everything else.

Senator **Specter**. Would you repeat that, please?

Mr. **Greenwood**. In California the people we identified as low-rate robbers, which were about one-third of the people in prison, did only two robberies a year. The people with 2 priors for either robbery or burglary did on the average 26 robberies a year.

Using our prediction scale, which includes drug use, prior convictions——

Senator **Specter**. How do you come to the conclusion they did 26 a year? From what they told you?

Mr. **Greenwood**. We interviewed the offenders.

Senator **Specter**. So it is from your interviews, as opposed to the conviction rate, and the priors are their conviction rate?

Mr. **Greenwood**. The priors are from official records.

Senator **Specter**. So 2 or more convictions, when backed by interviews, show they have committed 26 prior robberies and burglaries?

Mr. **Greenwood**. Correct, on the average per year.

Senator **Specter**. Per year. If a person has two convictions over his criminal life?

Mr. **Greenwood**. Over his adult career.

Senator **Specter**. It is backed on the basis of interviews, 26 robberies or burglaries per year?

Mr. **Greenwood**. Correct.

Now, the best our prediction scale did, the ones we identified as high rate was 31. So in California that identification on the basis of priors is almost as good as ours.

I just mention, in Michigan it does not do as well with robbers. Those with 2 or more priors in Michigan did on the average 11 robberies a year. Our predicted high-rate robbers in Michigan did 21, twice as much. The point being that the prediction, what you use to predict who are the high-rate offenders, will vary somewhat between States.

Thank you.

Senator **Specter**. Thank you very much, Dr. Greenwood.

One question before we move on. You said that rehabilitation is not achieved by incarceration, based upon your statistics. What efforts have you found at rehabilitation? Do the correctional systems or the prison systems you have studied make any realistic effort at rehabilitation by not releasing functional illiterates who have no trade or profession?

Mr. **Greenwood**. Before my testimony I gave to Mr. Michel of your staff another report we have already completed based upon the same survey group. These offenders were interviewed and their official records checked to find out their deficiencies in a number of areas, educational, vocational, and alcohol and drug abuse.

We also found out to what degree they were participating in treatment. The degree to which they are participating varies quite a bit across States. But we find a large—about half of the offenders, for instance, who do not have high school equivalency are not participating in educational programs.

The worst neglect we found in prison was the percentage of offenders who had severe drug addiction problems before they went to prison and are participating in treatment programs, and there we are looking at 5 percent of the offenders who had drug problems on the street who were participating in treatment.

[The prepared statement of Mr. Greenwood follows:]

PREPARED STATEMENT OF PETER W. GREENWOOD

There are only four methods by which government may attempt to reduce crime rates: prevention, rehabilitation, deterrence, and incapacitation. For only one of them is there strong empirical support--incapacitation. After considerable experimentation there is no evidence to suggest that prevention programs can retard the onset of criminal careers or that rehabilitation programs can hasten their termination. The evidence concerning deterrence is ambiguous; unable to determine whether higher sanctions reduce crime or higher crime rates lead to reduced sanctions. As one state after another finds its prison population exceeding the available capacity, incapacitation theory offers the only rational method of restructuring sentencing policies to ensure that public safety is maximized.

The "incapacitation" effects of a sentencing policy refers to those crimes that are prevented while offenders are incarcerated. Incapacitation theory holds that the length of an individual's criminal career is unaffected by how he is sentenced. Incarceration merely subtracts time from the total period than an offender is active. The higher the rate at which he would commit crime while he is free, the greater the incapacitative effects of any given sentence. For purposes of incapacitation analysis, the sentencing policy for any specified group of offenders can be described by q,--the probability of arrest and conviction, J--the probability of incarceration given conviction, and S--the expected sentence length. The expected sentence for any one crime is qJS. Increas-

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ing qJS increases the prison population and decreases crime. The amount of crime an offender will commit under a sentencing policy qJS, expressed as a fraction of the amount he would commit if he were never incarcerated is

$$\frac{1}{\lambda qJS} .$$

The principal issue in estimating incapacitation effects lies in determining the crime rates of individual offenders. This can be done by two methods; examining their arrest records or asking them directly. A recent Rand study is based on the second method, relying on a survey which was administered to 2400 male prison and jail inmates in California, Michigan, and Texas in 1977. Combined with official record data from their case folders, this survey provided detailed information on each inmate's prior criminal activity, drug use, employment, juvenile history, and contacts with the criminal justice system. A variety of reliability and validity analyses that have been performed on this data, checking each inmate's responses for both its internal consistency and its agreement with official record information, indicate that the responses are unbiased along important dimensions such as age, race, main conviction crime, or self-reported level of criminal activity.

By comparing the correlations of a number of predictor variables with the self-reported offense rates, we have constructed a scale for distinguishing among offenders by their level of activity. The seven binary variables that make up this additive scale are:

1. Incarcerated more than half of the two year period preceeding the most recent arrest.
2. A prior conviction for the crime type that is being predicted.
3. Juvenile conviction prior to age 16.
4. Commitment to a state or federal juvenile facility.
5. Heroin or barbituate use in the two year period preceeding the current arrest.

6. Heroin or barbituate use as a juvenile.
7. Employed less than half of the two year period preceeding the current arrest.

This scale was used to distinguish between low-, medium-, and high-rate burglars and robbers, among offenders convicted for those crimes. Inmates convicted of more serious crimes against the person such as homicide, rape or assault, or less serious property crimes such as theft, forgery or fraud, all tended to commit robbery and burglary at much lower rates than those convicted of these crimes. In our analysis offenders who score only 0 or 1 on this scale are considered low-rate, those who score 2 or 3 are medium-rate, and those who score 4 or more are high-rate. The distribution and mean offense rates for each group, in each of the three sample states is shown in Table i-1

Table i-1

		California		Michigan		Texas	
		Robbery	Burglary	Robbery	Burglary	Robbery	Burglary
Low	N	36	37	52	25	49	70
	λ	2.2	12.6	6.1	71.6	1.4	6.0
Medium	N	58	69	72	65	49	92
	λ	11.0	87.6	11.7	34.0	5.4	20.5
High	N	84	54	26	34	19	41
	λ	30.9	156.3	20.6	101.4	7.7	51.1

The most striking thing about these figures is the low rate of criminal activity of Texas offenders compared to California and Michigan. Every imaginable way that we looked at this data, Texas offenders were far less active--as juveniles, in drug use, in their possession of weapons, etc. Whether this low rate of criminal activity among Texas offenders is a result of generally harsher sentencing practices (convicted offenders in Texas are much more likely to be sentenced to prison) or the result of some other social forces, we cannot say at this time.

For purposes of incapacitation analyses, we only had accurate information on current sentencing practices for California. In Michigan and Texas we only know the distribution of inmates between prison and jail (virtually all convicted felons in Texas serve their terms in prison) and the time they will serve.

In California the probability of arrest and conviction (computed from official data) for either robbery or burglary is 0.03--three chances out of 100. The probability of incarceration given conviction is 0.86 for robbery and 0.72 for burglary. The probability of being committed to prison (as opposed to jail) and the average prison term (to be actually served) for the different offense rate groups is shown in Table i-2. Notice that judges do fairly well in discriminating between high- and low-rate offenders in deciding who goes to prison, but that the parole board or legislature who determine the length of prison terms do not do so well, except in Texas.

Table i-2

Distribution of Commitments and
Mean Prison Term
By Predicted Offense Rate

State	Offense Rate	Predicted Offense Rate	Fraction Committed To Jail	Fraction Committed To Prison	Average Prison Term (Months)
Calif.	Robbery	Low	.88	.12	49.5
		Medium	.65	.35	53.3
		High	.53	.47	50.6
	Burglary	Low	.99	.01	29.6
		Medium	.94	.06	21.6
		High	.82	.18	20.0
Texas	Robbery	Low		1.0	52.8
		Medium		1.0	57.6
		High		1.0	114.0
	Burglary	Low		1.0	33.6
		Medium		1.0	58.8
		High		1.0	52.8

For both California and Texas we examined a number of alternative sentencing policies designed to increase incapacitation effects. There were considerable differences between the two states.

Among California robbers we found that a selective incapacitation strategy that reduced terms for low and medium-rate robbers, while increasing terms for high-rate robbers, could achieve a 15 percent reduction in the robbery rate with only 95 percent of the current incarceration level (population). An unselective attempt to increase incapacitation effects by increasing terms for all robbers equally requires a 25 percent increase in population to bring about the same 15 percent reduction in crime. Among burglars, the best selective policy required a 7 percent increase in prison population to bring about a 15 percent reduction in crime.

In Texas, additional incapacitation effects are much more expensive. For robbers it takes a 30 percent increase in incarceration to achieve a 10 percent reduction in crime. For burglars, a 15 percent increase in incarceration is required to achieve a 10 percent reduction in crime. This low effectiveness is due to the low rate of offending among Texas inmates.

There are several conclusions that can be drawn from this work. After reviewing the literature on prevention, rehabilitation, deterrrence and incapacitation--the only four crime reduction mechanisms available to government--it is clear that only incapacitation theory provides reasonable grounds for determining the relative severity with which different convicted offenders should be sentenced. The only other basis for distinguishing among offenders is deserved punishment or vengeance and here anyone's values are as good as anyone elses. In most states, the prison population is approaching or now exceeds the available capacity. Without a massive prison expansion program, longer terms for offenders convicted of serious violent crimes in which the victims are injured can only be achieved at the expense of public safety. Conviction for a heinous crime is not predictive of future serious criminality. If incapacitation effects are to be maximized, in order to bring about the lowest possible crime rate for a given level of incarceration, sentencing policies must be based on those factors associated with high rates of criminality.

Individual rates of offending and predictors of high-rate criminality vary considerably across states. No one sentencing formula will be optimal in every state. In order to determine the most efficient sentencing pattern to reduce crime, each state, or group of similar states, will have to examine its own patterns of criminal career behavior.

It is probably not necessary to rely on offender surveys to conduct these studies. Longitudinal arrest histories, combined with other background variables, obtainable from court records, should be adequate. The cost of conducting this research, possibly several hundred thousand dollars for each state, is relatively small compared to the costs of unnecessary incarceration. In California, a more selective sentencing policy could result in a 10 percent reduction in the number of incarcerated robbers without any increase in crime. This would amount to a savings of approximately $15 million a year in incarceration costs.

In our survey we did not have any information on the specific offense types for the jail respondents' prior convictions since this information was obtained only from prison inmate folders. For prison inmates convicted of robbery or burglary the following tables summarizes information on:

1. The percentage with at least 2 prior convictions for robbery or burglary.
2. The average annual offense rates.
3. Their expected sentence lengths.

Table S-1 provides information concerning prison inmates who were convicted of robbery. The information is provided for each of the three states in our sample separately.

The first row shows what percent of inmates convicted of robbery fall into three prior record categories--less than 2 prior convictions for robbery or burglary, 2 or more prior convictions for robbery or burglary, and 2 or more convictions for robbery.

Table S-1

CONVICTED ROBBERS

State	California			Michigan			Texas		
Prior conviction for robbery or burglary	Less Than 2	2 or More	2 or More for Robbery	Less Than 2	2 or More	2 or More for Robbery	Less Than 2	2 or More	2 or More for Robbery
Percentage of inmates convicted of this crime	58%	42%	22%	85%	15%	4%	80%	20%	12%
Average annual offense rate for robbery	18	26	34	13	11	43	3	9	12
Average annual offense rate for burglary	10	13	15	7	16	10	2	6	5
Average prison term (in months)	41	46	50	46	54	16*	72	115	137

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* Only 4 respondents

Table S-2

CONVICTED BURGLARS

State	California			Michigan			Texas		
Prior conviction for robbery or burglary	Less Than 2	2 or More	2 or More for Burglary	Less Than 2	2 or More	2 or More for Burglary	Less Than 2	2 or More	2 or More for Burglary
Percentage of inmates convicted of this crime	43%	57%	53%	70%	30%	28%	71%	29%	27%
Average annual offense rate for burglary	131	133	118	70	148	148	17	40	39
Average annual offense rate for robbers	3	3	3	2	0	0	0	0	0
Average prison term	21	22	22	26	39	40	39	90	95

The second row shows the average number of robberies per year, per offender, for each of the three groups. This is the expected number of robberies one offender in the group would do if he were free. The next row shows average number of burglaries per year, per offender, in each group.

The last row shows the average sentence lengths for offenders in each of three groups. Table S-2 provided the same information for inmates convicted of burglary.

Several observations can be made from these tables.

1. A much higher percentage of California inmates have 2 prior convictions for robbery or burglary than inmates in Michigan or Texas. This may be due to the fact that California has a higher percentage of career criminals or it just may indicate that offenders with lighter records are more likely to be imprisoned in Michigan or Texas. This is definitely true for Texas.
2. Most inmates convicted of burglary, who have 2 or more prior convictions for burglary or robbery, have 2 or more priors for burglary. Also, inmates convicted of burglary have fairly low offense rates for robbery.
3. Only about half of the inmates convicted of robbery, who have 2 or more prior convictions for robbery or burglary, have 2 or more priors for robbery.

4 The association between having two or more priors and average off ense rates varies by state and crime type. Two or more priors predicts higher rates of offending for California robbers, Michigan burglars and Texas robbers and burglars. It does not for Michigan robbers or California burglars.

Senator SPECTER. Thank you very much, Dr. Greenwood.

I would now like to call on Dr. Charles Wellford, who received his bachelor and master's from the University of Maryland, and his Ph. D. from the University of Pennsylvania. From 1976 to 1981 he was the Deputy Assistant Director, Office of Policy and Planning, of the Department of Justice; an administrator of the Federal justice research program from 1979 to 1981.

He is currently the director and professor at the Institute of Criminal Justice and Criminology at the University of Maryland, where he is working on methods of predicting habitual offenders.

Dr. Wellford, we very much appreciate your coming and we look forward to your testimony.

STATEMENT OF DR. CHARLES WELLFORD, DIRECTOR AND PROFESSOR, INSTITUTE OF CRIMINAL JUSTICE AND CRIMINOLOGY, UNIVERSITY OF MARYLAND, ACCOMPANIED BY DR. WILLIAM M. RHODES, INSLAW

Mr. WELLFORD. Mr. Chairman, it is a pleasure to appear today to describe to you research currently being done under the support of the Department of Justice on the topic of career criminals and the Federal justice system. We have submitted written testimony, with your permission we will briefly summarize that material.

I am accompanied today by Dr. William Rhodes from INSLAW, Inc., which is the firm under contract to the Department of Justice to conduct this research. Dr. Rhodes has his doctorate in economics from the University of Minnesota and has participated in many of the projects INSLAW has done to identify career criminals and establish career criminal programs with the support of the PROMIS management information system.

In phase one of the Attorney General's task force report on violent crime, it was recommended that the Attorney General direct relevant units in the Department of Justice to conduct further research on the development of career criminal programs, particularly for the Federal system. As you know, career criminal programs have been established for many local prosecutors, as was described earlier today.

But the Department of Justice, through the U.S. attorneys' offices, has not as a general policy developed career criminal projects that are similar in nature and scope. The research was funded in June of this year and is due to be completed with the final report submitted by the end of next month.

The research has not been presented formally to the Department of Justice, although we have briefed some members of the staff of the Attorney General. As as you know in his testimony 2 weeks ago in support of the revision of the Federal criminal code, the Attorney General cited some of the early results from the research. We can only present to you today what we know will be the major findings from the study. We will have to await until a later date the Department of Justice's review of these results to determine what policies may be effectuated following their review of the research.

The project we are describing has four major components. I will describe three of those very briefly to you and then ask Dr. Rhodes to comment more extensively on the one I think is of most concern to the subcommittee.

The first component of the research was a survey of local prosecutors, particularly those who have had under their direction career criminal projects. We did this to ascertain their receptivity to a Federal career criminal project and their receptivity to U.S. attorneys' involvement in career criminal prosecution.

In general, the findings from that are that there is considerable support for this kind of development. Approximately 75 percent of the local prosecutors surveyed indicated their support for the development within the U.S. attorney offices of career criminal units, and they encouraged that development.

Senator SPECTER. Seventy-five percent of the prosecutors you surveyed would like to see career criminal programs in the U.S. attorney offices?

Mr. WELLFORD. That is correct, Senator.

Senator SPECTER. And those were State as well as Federal prosecutors?

Mr. WELLFORD. No, these were State and local, primarily local prosecutors.

Senator SPECTER. They actively wanted to see this done?

Mr. WELLFORD. That is correct. As was stated earlier this morning that would be the second choice. Their first choice would be continued support for their own programs. But holding that aside, there was general recognition of the potential value for such a program within the U.S. attorneys' offices.

The second component of the project was a survey of U.S. attorneys and assistant U.S. attorneys, again to ascertain their understanding of what a career criminal program might be and their reaction to one being encouraged or required by the Department of Justice.

Senator SPECTER. Excuse me. How many people did you interview in the group of State prosecutors leading to your 75 percent figure?

Mr. WELLFORD. As I recall, there were 87 interviewed in that portion of the project.

Senator SPECTER. Eighty-seven. Do you think that is sufficiently representative so that you can draw a conclusion nationwide in accordance with regular sampling procedures?

Mr. WELLFORD. INSLAW had previously identified all career criminal projects in major jurisdictions through another grant given, I think, through the office of criminal justice programs. These were all of those who had been established in the last few years, primarily with LEAA funding.

Senator SPECTER. So these are the ones who, of those who had it themselves, would like to see it at the Federal level?

Mr. WELLFORD. That is right.

We were also interested in documenting the characteristics of these programs, so if U.S. attorneys wished to better coordinate with local prosecutors who had career criminal efforts we could give them some documentation on the characteristics of the local programs. So through this survey we also have a fairly good general description of each of the career criminal projects at the local level.

The second component was a survey of U.S. attorneys and assistant U.S. attorneys, and as I said our interest there was to gain their reaction to such a program. Those results are still being looked at, but in general I would say that the U.S. attorneys and assistant U.S. attorneys interviewed in 14 large jurisdictions, recognized the value of such a program, although they are understandably concerned about establishing rigid criteria for any one district.

To support what was said earlier by Dr. Greenwood, I am convinced that if a program at the Federal level were established, there would have to be different selection criteria, perhaps a different structure to the program within each of the Federal districts. We could not develop one set of criteria for Federal offenders, identifying them the same way in all jurisdictions as career criminals.

I think there is the kind of variation that Dr. Greenwood suggested they have demonstrated for State and local offenders within the Federal system also. But there is support for the idea. U.S. attorneys, assistant U.S. attorneys I think are clearly interested in fulfilling this priority of the Department. The only concern might be over the degree of rigidity.

The third component of the project is a study of recidivism among Federal offenders. This portion Dr. Rhodes will speak to in greater detail. I would just say in summary that I am quite encouraged by the results to date. They demonstrate to my satisfaction that within the Federal system there are a significant number of individuals who could be appropriately classified as career criminals; these individuals do account for a very significant number of offenses; and that the Federal Government does have a potential role in combatting violent street-type crime by focusing some of its resources on these career criminals.

Senator **Specter**. So you think this particular bill is headed in the right direction?

Mr. **Wellford**. I think the focusing on career criminals is certainly a priority.

I think even before the bill there could be a step taken by the Department of Justice on its own to establish career criminal programs for its U.S. attorneys' offices. There are many individuals coming in as defendants in U.S. attorneys' offices who look like the career criminals that have been observed at the State and local level, and if efforts were made to target resources on those individuals there could be a substantial impact on the career criminal population at both the State and Federal level.

Senator **Specter**. But this bill would have a broader sweep, would it not, in targeting robbers and burglars who were repeaters?

Mr. **Wellford**. It certainly would.

The final portion I will mention, and we cannot present any results today, just for your information the project does involve a simulation study to estimate the impact on the Federal justice system of targeting resources on career criminals. We are concerned that a program not be established which would so tax the system that it would probably not be effectively utilized. In particular, we are looking at the potential effects particularly on the correctional population in the Federal system of encouraging more prosecution by U.S. attorneys.

If we could continue, we would like to ask Mr. Rhodes to give a little more detail on this third component, the recidivism study.

Senator **Specter**. Before you do, Dr. Wellford, one final question for you at this juncture, at least, and that is when you say you would like to have different criteria for one area as opposed to another, what do you have in mind? What would the variations be?

Mr. **Wellford**. Well——

Senator **Specter**. New York City would differ from Wichita, Kans., is that the sort of thing you have in mind?

Mr. **Wellford**. That is correct.

Senator **Specter**. And what would the variance be?

Mr. **Wellford**. The variables may remain the same, but the cutting points one might use to identify the career criminals could well vary. As Dr. Greenwood reported, Michigan and California look alike, but Texas looks very different in terms of their high rate offenders.

I would expect in the Federal system that may be paralleled, and therefore, different criteria or different cutting points on the criteria Dr. Rhodes will describe in a minute might be necessary within each of these jurisdictions to make sure that you are targeting on the high rate chronic criminal offender within that jurisdiction, since their career patterns may vary.

[The prepared statement of Mr. Wellford and Mr. Rhodes follows:]

PREPARED STATEMENT OF CHARLES F. WELLFORD AND WILLIAM RHODES

Mr. Chairman it is a pleasure to appear before the subcommittee today to describe to you research that is currently being done under the support of the Department of Justice on the topic of career criminals in the federal system. I am accompanied by Dr. William Rhodes, Senior Economist at INSLAW Inc., the firm that is under contract to the Federal Justice Research Program of the Department of Justice to conduct this important research project.

In the Phase I report of the Attorney General's Task Force on Violent Crime, it was recommended that the Attorney General direct relevent units in the Department of Justice to conduct research on the further development of career criminal programs, particularly at the federal level. In response to that recommendation, the Federal Justice Research Program in the Office of Legal Policy contracted with INSLAW Inc. to conduct a comprehensive and intensive study of the potential of career criminal programs at the federal level. While that research is still in progress, we are pleased to be able to report to you today some of the preliminary findings. I should emphasize at the outset that these results have not yet been reviewed by the Department. We in no way anticipate that the basic findings from this research will change, however, the implications that the findings have for Department of Justice policies will have to be determined after further review of the results by senior managers in the Department.

The Federal Career Criminal Project has four major components. The first component consists of a survey of local prosecutors to determine their experience with career criminal programs at the local level, and their expectations as to the likely value of a career criminal program at the federal level. This component has been completed and the results indicate general satisfaction with career criminal programs and the expectation by local prosecutors that a federal career program would be beneficial, especially if it was well integrated and coordinated with efforts at the local level. The second component of the project involved a survey of U.S. Attorneys and Assistant U.S. Attorneys concerning their perceptions of the advantages and disadvantages of a federal career criminal program. The results of that survey are now being analyzed. The third component of the project is a study of patterns of recidivism among known federal offenders. In this particular aspect of the project we were interested in the following questions: (1) is there a portion of defendents in federal cases that could be usefully classified as career criminals?; (2) what are the criminal career patterns for these offenders and how much crime are they involved in?; (3) can these offenders be identified in a systematic way without also identifying other individuals as career criminals whose future behavior would not involve heavy amounts of crime?; and, (4) could these identification procedures be related to information that is routinely available to U.S. attorneys at the points of decision-making in particular cases. The findings which Dr. Rhodes will describe are, in my opinion, quite encouraging. As he will report there do appear to be a significant number of offenders in the federal system who can be appropriately classified as career criminals. These offenders do account for a significant amount of criminal behavior, and they can be identified with very high levels of accuracy and low levels of overprediction. The fourth component of the project involves a simulation of the effect on the federal justice system, especially the correctional system, of increasing the resources devoted to the investigation and prosecution of career criminals. This portion of the project is just underway and we are not able at this point to provide any results to you. I would now like to ask Dr. Rhodes to describe to you the recidivism portion of this project. After his presentation we would of course be more than willing to attempt to answer any questions that you or other members of the Sub-committee might have. Thank you.

REMARKS BY DR. RHODES

Over the past several years, INSLAW, Inc.--formerly the Institute for Law and Social Research--has provided technical assistance to local career criminal projects throughout the country. INSLAW has also provided basic research in furtherance of the goals of those programs. As Dr. Wellford has informed you, INSLAW is conducting research sponsored by the Federal Justice Research Program that is intended to support the possible development of a federal career criminal program. I would like to tell you about the findings from that latter research, and discuss with you what are, in my opinion, some policy implications implied by those findings.

I. ASSUMPTIONS UNDERPINNING A CAREER CRIMINAL PROGRAM

Success of a career criminal program rests, in part, on the truth of four assumptions that underlie the program's operation.

First, a small subset of a larger group of active criminals accounts for a disproportionately large amount of serious crime.

Second, this subset of "career" or "habitual" offenders can be identified at the time that their cases are screened. The selection criteria require information that is known at the time of screening and exclude factors, such as race or sex, that may be inappropriate to consider during case screening.

Third, the cases of career criminals can be subjected to special handling. This special attention enhances the convictability of habitual offenders, or leads to stiffer sentences for this subset of criminals, or both.

Fourth, the crime prevented as a consequence of this special handling is commensurate with the extra cost that emphasis on the prosecution and sentencing of career criminals entails.

II. FINDINGS

Regarding the assertion that a small subset of offenders account for a disproportionately large amount of crime, research discussed today by both Greenwood and Ball make it apparent that certain hardcore offenders repeatedly commit serious crimes resulting in injury, property loss, and the distribution of contraband. Additional research supports this

Table 1

FEDERAL ARRESTEES WITH 5 OR MORE PRIOR LOCAL ARRESTS

Average and Total Numbers of Local Arrests for
2252 Federal Arrestees, by Type of Arrest

OFFENSE	ARRESTS PER INDIVIDUAL	TOTAL ARRESTS
ASSAULT & HOMICIDE	0.717	1614
RAPE & KIDNAPPING	0.091	204
ROBBERY	0.464	1046
ARSON	0.186	418
BURGLARY	0.899	2025
LARCENY	1.878	4229
AUTO THEFT	0.595	1340
FORGERY	0.385	866
FRAUD	0.556	1252
DRUGS	1.517	3417
PROBATION VIOLATIONS	0.714	1608
WEAPONS	0.513	1155
OTHER	2.344	5279
ALL OFFENSES	10.874	24488

Based on 9100 1976 federal arrestees; 2252 had 5 or more prior non-federal arrests during 1961-1975.

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conclusion. Williams, for instance, reported that in the District of Columbia, 7 percent of all arrested people accounted for 25 percent of all felony arrests.

What is not often realized is that habitual offenders who are responsible for much local crime frequently violate federal laws, and thus, have their cases considered by federal prosecutors. Indeed, 24 percent of all federal arrestees (by the FBI) had five or more local arrests. Table 1 reveals that many of these "priors" were for serious matters.

Moreover, arrest statistics fail to reveal the actual amount of crime that lies hidden behind apprehensions by law enforcement officials. From interviews conducted in federal prisons, INSLAW found that, on average, incarcerated offenders who were convicted of street offenses committed nearly 20 crimes per year when free to do so.

These findings strongly suggest that there can be a significant federal presence in an attack on local street crime. The effectiveness of this attack depends importantly on the ability of federal agents and U.S. Attorneys to identify the most repetitive offenders. This need brings us to the second assumption, that career criminals can be distinguished from more occasional offenders.

To test the second assumption, that career criminals can be identified, we observed the arrests for a sample of 1,700 people who had been convicted of street crimes (robbery, burglary, drug sales, and so on) in federal courts. Arrests were recorded for a five-year period that commenced the day that the offender was released from prison, or placed on probation, following his federal conviction. Our intent was to identify those offenders who were rearrested during this followup period.

Using statistical procedures, we developed criteria that were useful in distinguishing offenders who were engaged in

Table 2

PROPOSED POINT SCORES FOR SELECTING CAREER CRIMINALS

Variable	Points
Heavy use of alcohol	+ 5
Heroin Use	+10
Age at time of instant arrest	
Less than 22	+21
23 - 27	+14
28 - 32	+ 7
38 - 42	- 7
43+	-14
Length of criminal career	
0-5 years	0
6-10	1
11-15	2
16-20	3
21+	4
Arrests during last five years	
Crimes of violence	4 per arrest
Crimes against property	3 per arrest
Sale of drugs	4 per arrest
Other offenses	2 per arrest
Longest time served, single term	
1-5 months	4
6-12	9
13-24	18
25-36	27
37-48	36
49+	45
Number probation sentences	1.5 per arrest
Instant offense was crime of violence	7
Instant offense was crime labeled "other"	-18

47 points:
Critical Value to Label an Offender
As a Career Criminal

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"large" amounts of crime from offenders who were involved in lesser amounts of crime. Of course, "large" is a relative term. For purposes of illustration, we define a habitual offender as one who is expected to commit at least eight serious offenses (exclusive of drug sales) per year at risk. In fact, career criminals who satisfy this definition commit crimes far in excess of this figure.

Table 2 provides a selection criteria that would be expected to identify habitual offenders. The criteria assign points to salient factors that are associated with repeated criminal behavior. For example, an offender (or defendant, dependent on his or her legal status) receives 3 points for every serious property crime that resulted in an arrest during the five-year period preceeding the instant federal offense. When the offender receives a sufficient number of points--47 in this illustration--he is labeled as a career criminal.

These hypothetical selection criteria appear to do a good job of distinguishing career criminals from other offenders, at least in our sample. The numbers provided in Table 3 make this point.

In Table 3, we provide estimates of the amount of crime that would be committed by career criminals and non-habitual offenders over a hypothetical five-year period during which both groups are assumed to be free of penal restraints. Career criminals are estimated to commit almost 200 serious offenses, exclusive of drug sales--almost 40 crimes per year. The non-habitual counterpart of the career criminal is responsible for an estimated 7 crimes per year. On the basis of differential offense rates, the selection rule does an exceptional job of distinguishing offenders.

Another way to test the validity of the selection criteria is to note that, among those offenders who were designated to

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Table 3. SELECTION OF CAREER CRIMINALS BY APPROXIMATE RULE

	Non-targeted offenders		Targeted offenders		All Offenders	
	Projected	Rate	Projected	Rate	Projected	Rate
Violent	2298.903	1.515	1779.233	9.315	4078.171	2.388
Person	238.104	0.157	172.579	0.904	410.685	0.240
Robbery	1912.372	1.274	1549.031	8.005	3461.425	2.027
Arson	1611.668	1.062	1183.000	6.194	2794.677	1.636
Burglary	4495.799	2.964	3425.677	17.945	7921.486	4.638
Larceny	18732.127	12.348	13048.666	68.318	31780.523	18.607
Auto theft	2641.214	1.743	1664.730	8.705	4305.917	2.521
Forgery	2965.439	1.955	1695.521	8.877	4660.960	2.729
Fraud	2526.532	1.661	1821.728	9.538	4348.259	2.546
Drugs	180269.734	110.833	133855.325	700.813	314124.562	183.914
Probation	4048.614	2.669	2585.207	13.535	6633.851	3.884
Weapons	1261.167	0.831	1057.184	5.545	2318.348	1.357
Other	9620.180	6.342	6662.147	34.880	16282.401	9.533
TOTAL	232640.687	153.356	170476.312	892.546	403117.312	236.017
Number	1517.		191.		1708.	
% Recidivating						
Between yrs 0-1	14.766		49.215		18.618	
Between yrs 1-2	9.427		21.466		10.773	
Between yrs 2-3	6.262		9.948		6.674	
Between yrs 3-4	3.230		5.236		3.454	
Between yrs 4-5	2.373		0.000		2.108	
Not during followup	63.942		14.136		58.372	
Average recidivism time in months	19.845		13.884		18.463	

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be habitual, only 14 percent avoided arrest altogether over the entire five-year followup period. Almost half were rearrested during the first year of their freedom. In contrast, almost two-thirds of the non-habitual offenders avoided arrest for the entire five-year followup period. Consequently, the selection criteria seem to pose little risk that persons who, in fact, would avoid arrest following release would mistakenly be identified as being career criminals.

Using these selection criteria to identify career criminals, we estimate that there are currently about 2,000 career criminals prosecuted in federal district courts. Of course, this estimate is subject to the definition of an habitual offender. By relaxing the number of "points" required to qualify a person as a career criminal, the pool of habitual offenders would increase. As a result, however, the estimated number of crimes per offender would fall, and the number of non-habitual offenders erroneously selected would increase. The effect would be the opposite if the criteria were tightened.

SUMMARY

Based on these findings, we conclude that there exists a core of highly active criminals who account for a disproportionate amount of street crime. Moreover, many of these local offenders frequently commit federal crimes, and are liable for federal prosecution. Our evidence reveals that this core of habitual or career criminals can be identified, and thus subjected to special handling by U.S. Attorneys. These findings seem to point toward a conclusion that the federal government can play an important role in fighting what is too often considered to be a local problem: crime on the streets.

VITA

Charles Franklin Wellford

1004 Springhill Way
Gambrills, Maryland 21054
(301) 674-4662

Education:

1961, B.A., with honors, University of Maryland

1963, M.A., University of Maryland

1969, Ph.D., University of Pennsylvania

Current Position:

Professor and Director, Institute of Criminal Justice and Criminology, University of Maryland at College Park

Teaching Experience:

Associate Professor, School of Criminology, Florida State University, 1972-76 (Tenured 1975)

Assistant Professor, Department of Sociology, University of Maryland, 1970-72

Professional Experience:

U.S. Department of Justice, 1976 - 1981

Administrator, Federal Justice Research Program, Office of the Attorney General, October 1979 - July 198

Deputy Administrator, Federal Justice Research Program, Office of the Attorney General, March 1977 - September 1979

Deputy Assistant Director, Office of Policy and Planning Office of the Attorney General, November 1976 to March 1977

Chairman, Juvenile Justice Advisory Board, Anne Arundel County, Maryland, 1977-1979

Director, Crime Prevention Programs Urban Systems Center, Westinghouse Electric Corporation, 1976

Sociologist, National Institute for Law Enforcement and Criminal Justice, Department of Justice, 1969-70

Research Assistant, Center for Studies in Criminology and Criminal Law, University of Pennsylvania, 1967-69

Staff Sociologist, Community Legal Services, Juvenile Division, Philadelphia, Pennsylvania, Summer 1967

Research Assistant, Institute of Corrections, Philadelphia, Summer 1965 and 1966

Research Area Director, Employment of Federal Offenders, 1965-66

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Research Assistant, American Correctional Association, Summer 1963

Counselor, Cedar Knoll School for Boys, Summer 1961

Professional Awards and Positions:

B.A degree awarded with honors
Alpha Kappa Delta
Psi Chi
Bobbs-Merrill Outstanding Student Award, 1969
Editorial Consultant, *Journal of Criminal Law and Criminology* (1973 -)
Assistant Editor, *Criminology* (1973-75)
Associate Editor, *Criminology* (1975-76) (1980-)
Editorial Consultant, *Criminology* (1976-)
Editorial Consultant, *Criminal Justice and Behavior* (1975-)
Editorial Consultant, *Law and Public Policy* (1977-)
Chairperson, Accrediation and Standards Committee of the American Society of Criminology (1975-76)
Program Chairperson, 1977 Annual Meetings of the American Society of Criminology
Chairperson, Task Force on the Future of the American Society of Criminology, (1978-79)
Member, Joint Commission on Criminology and Criminal Justice Educational Standards (1977, Alternate member 1978 -)
Chairperson, Grants and Contracts Committee, American Society of Criminology (1978-1981)
Executive Counselor (elected), American Society of Criminology (1977-1980)

Attorney General Special Commendation, 1979, 1980
Outstanding Performance Award, 1977, 1978, 1979, 1980
Member, U.S. Delegation to the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders

Associations:

American Sociological Association
Law and Society Association
American Society of Criminology
American Correctional Association

Publications:

"Employment of Federal Probationers," *Proceedings of the American Correctional Association*, 1966 (with G. Pownall).

"Factors Associated with the Process of Prisonization," June 1967, *Journal of Criminal Law, Criminology and Police Science*.

Juvenile Delinquency Prevention, Prentice-Hall, 1967 (with William Amos).

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Funded Projects

Crime Prevention Through Environmental Design. Funded by National Institute of Law Enforcement and Criminal Justice, 1976. Research Director. ($1,000,000)

National Court Services Evaluation Project - Evaluation of five-city replication of Des Moines Exemplary Project. LEAA 1974-78. Project Director until departure from Florida State University (mid-1976) ($440,000)

Mentally Retarded Offender. Funded by Florida Bureau of Criminal Justice Planning and Assistance, 1973-76. Project Director. ($30,000)

Crime and the Police: A Multivariate Analysis. Funded by Police Foundation, 1972. Project Director. ($26,000)

Analysis of impact of volunteers on juvenile court. Funded by Maryland Department of Juvenile Services, 1971. Project Director. ($12,000)

Identification and Career analysis of chronic offenders. Funded through National Institute of Law Enforcement and Criminal Justice, 1970. ($5,000)

An analysis of citizen perception of police response. A survey analysis of approximately 600 randomly sampled calls for service using police officers and civilians as interviewers. Funded through National Institute of Law Enforcement and Criminal Justice (with Frank Furstenberg), 1969. ($4,000)

WILLIAM M. RHODES

Dr. William M. Rhodes is Senior Economist and Director of the Productivity Research Center at INSLAW. He received a Ph.D. in economics in 1974 from the University of Minnesota and a B.A. from Bowdoin College (1969). His areas of expertise include microeconomic theory, criminology, statistics, productivity studies, and computer applications.

Dr. Rhodes joined INSLAW In September 1977, after four years on the faculty of the School of Criminology at Florida State University, where he taught graduate-level courses in statistics, computer applications, criminal courts, and the economics of crime. In addition, he taught numerous undergraduate courses in courts, police, and research methods. Dr. Rhodes also taught economics courses at the University of Minnesota and the University of Wisconsin (River Falls).

Dr. Rhodes has extensive experience with the study of criminal behavior and criminal justice. He has analyzed decision making in a cross section of settings including federal district courts, Minnesota county courts, the 24 offices of the District Attorney for the County of Los Angeles, eleven U.S. Attorney Offices and five county/city criminal justice systems. He has also examined criminal justice operations in individual settings including the District of Columbia and Hennepin and Ramsey Counties (Minnesota). The topics of these studies have included prosecutor case processing, plea bargaining, sentencing, the construction of sentencing guidelines, and an evaluation of community corrections. In the area of criminal decision making, Dr. Rhodes has conducted a study of deterrence, a study of recidivism, and a study of the mobility of offenders in the District of Columbia.

Dr. Rhodes has had practical experience with research topics outside the field of criminal justice. He has conducted analyses in the offices of the District Attorney and Public Defender for the County of Los Angeles to develop "case weights" reflecting the attorney time required to handle cases and matters. He is presently conducting a similar study of case weights for civil and criminal cases in U.S. Attorney Offices. This latter study requires the development of models to be used in projecting future work loads in order to support budget submissions by the Department of Justice. Dr. Rhodes is also active in researching productivity in private law firms, corporate legal departments, and public offices.

In support of these research interests, Dr. Rhodes has developed a broad set of research skills. His empirical studies have used multiple linear regression, probit, tobit, log-linear contingency table analysis, factor analysis, and a variety of time-series techniques. His theoretical studies have drawn on microeconomic theory, criminology, structural equation modeling, and organizational behavior. Many of his studies have required extensive data collection from both manual and automated sources. As a result, Dr. Rhodes has demonstrated an ability to effectively and efficiently construct large data bases and to process these data with appropriate statistical and mathematical models.

He is a member of the American Economic Association, the Southern Economic Association, the American Society of

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Criminology, and the Law and Society Association. He has presented papers and been a discussant at numerous national meetings.

His recent publications and papers include:

"Federal Sentencing Guidelines: Will They Shift Discretion from Judge to Prosecutor?" with Catherine Conly, forthcoming in The Judiciary, James A. Cramer, ed. (Sage Criminal Justice Systems Annuals, Volume 15).

"Critique of the Methodology Used in the Construction of Sentencing Guidelines" (Submitted for publication).

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"Economics of Criminal courts: A Theoretical and Empirical investigation," *The Journal of Legal Studies* 5, no. 2 (June 1976).

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Senator Specter. Thank you very much.

Welcome, Dr. Rhodes. I know you have your Ph. D. from the University of Minnesota. You are currently senior economist and director of productivity research center at INSLAW. We welcome you here and will be pleased to hear your supplement to Dr. Wellford's testimony.

Mr. Rhodes. Thank you, Senator. Summarizing my testimony, I would like to draw your attention to two tables, tables 2 and 3.

We have just completed a study at INSLAW. The intent of that study was to determine what factors helped predict recidivism among Federal offenders. By recidivism we mean rearrest following their Federal conviction and sentencing. In that study we examined the arrest histories of 1,700 Federal offenders who were convicted of street crimes in Federal courts. We followed them for a total of 5 years and observed their arrest histories. That 5-year period started with the time when they were released from Federal prison or the time they were sentenced to probation.

Our intent was to identify those offenders who were high risks, that is, those offenders who committed a large number of crimes after a release, and to make some estimates of the number of crimes they in fact committed.

Table 2 summarizes some results from a formula we derived that is capable of selecting those offenders who are the most intensive offenders or, more specifically, those offenders who recidivated very quickly. I would like to draw your attention to some of the factors mentioned in this table.

Heavy use of alcohol, for example, gets an offender five points. Heroin addiction nets an offender 10 points. I will not go through the rest of the point scheme, but I would like to point out that the factors which enter into this formula do reflect aspects of an offender's culpability, at least as indicated by his prior criminal history of arrest and time served.

There is an exception to that. You will notice age enters into the formula.

Senator Specter. Length of criminal career would only get you four points if you are more than 21 years. Is that not disproportionate with five points for alcohol?

Mr. Rhodes. I will tell you what happens, Senator. As the career increases and the offender ages, his criminality seems to fall off. It is a fact that many criminologists have noted, that is also reflected in the age variable, that we see. Young offenders get more points by virtue of their age.

Senator Specter. You do not give them any points for up to 5 years of a criminal career. That seems inexpensive.

Mr. Rhodes. I am sorry, we are looking at different things here.

Senator Specter. I am looking at your chart.

Mr. Rhodes. Correct. It depends upon where the starting point is. If you would like to give him 10 points, and 6 to 10 we'll give him 11 and 12, and so on. It is just that zero to five is the reference year. All of the points will be summed.

Senator Specter. But am I reading it incorrectly? If you have 5 years of a criminal career you do not get any points? It seems like a person would be entitled to some points by that time.

Mr. RHODES. That is correct. The points, of course, are derived statistically, and until we observe criminal careers in excess of 5 years we do not seem to derive much predictive power, and indeed we do not derive much predictive power from the length overall of the criminal career, that again apparently arising because criminals age and commit at lesser rates.

Senator SPECTER. How can you say that heavy use of alcohol gives you five points? There must be a lot of people who have a heavy use of alcohol who have never committed any crimes and are not on the career criminal pattern at all.

Mr. RHODES. I would have to agree with that. But it is in conjunction with other factors. Five points will not define you as a career criminal. In our selection criteria we set 47. That is only because we listed the number of points simply for an illustration.

But one who is a heavy user of alcohol but has not done crimes in the past will not satisfy that criteria, Senator.

Before turning from this table, I would like to point out one other aspect. The instant offense, whether it is a robbery, burglary or whatever, is not a terribly important predictor in this equation. And one reason why I think it is not an important predictor is criminals seem to switch a great deal between the offenses they commit.

I would like to call that to your attention. If you have an offender who is convicted of an offense that you might not like to target as a career criminal, nevertheless, he may be doing very serious offenses not reflected in that instant offense. Consequently, our prediction equation does not take into account, except for assigning seven points to a violent offense, the instant offense alone.

If I could direct you to the next table, table 3, we use this prediction equation to assign offenders in our sample to one of two groups. I am sorry for the quality of the table. But the first two columns on the left are noncareer criminals according to the criteria. The next two columns are career offenders, career criminals according to the criteria.

We have made estimates of the number of offenses that offenders assigned to those categories will commit over a 5-year period at risk. Our estimates are that career criminals will commit on the order of 200 serious offenses during that 5-year period. That is exclusive of drug sales. Adding drug sales, the number goes to about 900.

Noncareer offenders are committing on the order of 40 offenses for a 5-year period at risk. What I will point out to you is the difference between those two groups, where that difference arises from the selection criteria we have used.

Another aspect of this table I would like to point out to you is, using the selection criteria we have selected persons 50 percent of whom will recidivate within a 1-year period, almost 85 percent of whom will recidivate during a 5-year period. That is, they will be rearrested for a serious offense.

For those offenders which we labeled as noncareer criminals, we see that almost two-thirds of them will not recidivate within that 2-year period. I think that these numbers are encouraging in the sense that they allow us to distinguish those offenders who are highly recidivistic, that is likely to be career criminals, from those who are not, which addresses the issue that Mr. Greenwood pointed out of the need to have selection criteria so we can focus limited law enforcement resources on those offenders who appear to be the most dangerous.

Senator **Specter**. Do you think we are at the right point, as Dr. Greenwood suggested, by looking at those who have committed two or more prior robberies or burglaries?

Mr. **Rhodes**. Our criteria would not look at those factors alone. We look at the number of arrests that occurred over the last 5 years. Up to that period the arrests do not have much predictive value.

As a quality factor, we also look at the length of time.

Senator **Specter**. You have a problem if you base—statistically, you can base conclusions on arrests; but I would suggest to you you have a real problem if you base any enforcement procedure on arrests, because of the presumption of innocence which attaches notwithstanding arrests.

Mr. **Rhodes**. I cannot speak as a lawyer, Senator, so I do not know the answer to that.

Senator **Specter**. Well, I can.

Mr. **Rhodes**. I will accept your opinion on that. [Laughter.]

Senator **Specter**. That is a big concern of mine, and I would suggest it to you, who have done very extensive research, that you cannot expect a Congress to act on arrests. Although it is a commonsense indicator, there are too many due process considerations.

Judges will for some purposes consider arrests, but not really for many, when it comes to sentencing that is a factor that is not one which can be given extensive weight, because of the presumption of innocence. It is there notwithstanding arrests.

Mr. **Rhodes**. I can accept that argument. Let me point out, the biggest predictive variable in this equation is the length of time previously served, which, of course, arises from convictions. The reason we used arrests is that the data we work with simply was not good at identifying convictions. They were FBI rap sheets. They did a good job identifying arrests, but not convictions.

Most researchers have found similar results when they have used convictions in their equations rather than arrests.

I will make one other point. We attempted to estimate the number of career criminals presently prosecuted in the Federal system using these prediction equations. We would estimate the number is on the order of about 2,000. There would seem to be the capacity to increase that number considerably.

Over the last 5 years, the number of Federal prosecutions, for example, has fallen off about 40 percent. Were that falloff not as great as that, then obviously the number of career criminals prosecuted in Federal courts would be more than they are presently.

There is at present no specific declination policy in the Federal system to identify career criminals and target them for special prosecution. Were there specific policies regarding declinations, we suspect the number of career criminals could increase beyond the 2,000.

Thank you.

Senator **Specter**. OK, thank you very much, Dr. Rhodes.

One final question, the hour is growing late for the panel. That is, I take it there is a consensus that you think we are heading in the right direction, from the research you men have done, in looking toward the career criminal as a category, however we define it, in trying to strike at violent street crime in this country. Is there any disagreement with that proposition?

Mr. GREENWOOD. None.

Mr. WELLFORD. None at all.

Mr. RHODES. [Nods negatively.]

Senator SPECTER. And on our criterion for two more offenses, the gun has been added, the firearm has been added in for two reasons: One is as an indicator of violence; but more fundamentally as a jurisdictional ingredient, which as you heard Mr. Jensen testify to earlier, is a legal basis for attaching Federal jurisdiction, which we think is valid.

Would any of you have any suggestions as to how to improve upon that criterion for defining a career criminal, or do you think it does the job generally?

Mr. NURCO. There are a number of addicts, Senator, who will carry knives, lethal knives, big knives, and who might well fall into your concept of career criminals prone to violence, who would not be captured by this if you restricted it to firearms. But I understand, as you say, there are other considerations here.

Senator SPECTER. We might have—but do you think the one we have now is reasonably calculated to catch the career criminal category?

Mr. NURCO. A significant portion.

Senator SPECTER. OK, the last question will be on the number of offenses. I am intrigued by the testimony of Dr. Ball in many respects, but especially with the statistic of 50 million crimes. I have asked to get a compilation from the FBI index, crimes in the United States. We have a 13 million figure for the year, but these are only reported crimes and serious crimes. It does not include drug offenses.

But your figure, Dr. Ball, does not include drug offenses either, does it?

Mr. BALL. It includes sale on a daily basis, but not possession.

Senator SPECTER. What is the feeling of the panel in general? Were you surprised, Dr. Greenwood, by the 50 million figure? Do you think it is low?

Mr. GREENWOOD. As I mentioned before, I think that 50 million crimes figure includes lots of larceny, what is called boosting.

Senator SPECTER. I do not think Dr. Ball is including shoplifting; are you?

Mr. BALL. Sure.

Mr. GREENWOOD. It does. If you take the odds for someone committing burglary or robbery, they have a 3-percent chance of getting arrested, and their chance of committing 50 crimes and not being locked up is very slight.

Senator SPECTER. Maybe the 50 million figure is inflated by the shoplifting. There may have been 1 million of those since we have been having testimony this morning. [Laughter.]

OK, gentlemen. Thank you very much for coming. We appreciate your being with us on short notice. We are trying to fast-track this and we very much appreciate your contributions. And we will doubtless be in touch with you some more.

Mr. **Ball**. Thank you. I am glad to be here.

Mr. **Greenwood**. Thank you.

[Whereupon, at 1:15 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

CAREER CRIMINAL LIFE SENTENCE ACT OF 1981

THURSDAY, DECEMBER 10, 1981

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee was convened at 10:35 a.m. in room 6226, Dirksen Senate Office Building, the Honorable Arlen Specter (chairman of the subcommittee) presiding.

Present: Senators Specter and Kennedy.

Also present: Bruce A. Cohen, chief counsel; Kevin Mills, counsel; and Paul Michel, professional staff member.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. The hearing will come to order.

We have Senator Kennedy, who is going to present the Honorable Newman Flanagan, district attorney of Suffolk County. So we will proceed with Senator Kennedy's introductory remarks and then he will join us on the hearing panel.

Senator?

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman.

I want to first of all commend you for holding these hearings and for the very exceptional leadership that you have been providing on the Judiciary Committee on all of these issues relating to crime and violence in our society. I welcome the opportunity to work with you in many of these areas.

I particularly appreciate the chance to present to this committee Newman Flanagan, who is the latest in a long line of very distinguished district attorneys for Suffolk County. I worked closely with his predecessor, Garrett Byrne, and that close cooperation has continued with Newman Flanagan.

No one knows the serious problems confronting the criminal justice system in large urban centers better than Newman Flanagan. He understands our need to deal with the revolving door syndrome, where the criminal is arrested, booked, and put back on the street, often before the victim gets home.

He has new ideas that are working well, such as the career criminal program, and the rape victim assistance program. These ideas are needed more than ever now in spite of scarce resources. The innovative responses in Suffolk County in light of the administration's policy of talking tough on crime, but slashing Federal aid to State and local governments, are to be commended.

We are very fortunate to have a person of Newman Flanagan's experience and expertise as the new president-elect of the National District Attorney Association. I look forward to working closely with him and the association in the future as we seek effective ways to meet the challenge of crime in our society.

Senator SPECTER. Thank you very much, Senator Kennedy.

We are going to proceed this morning to the consideration of three pending bills: S. 1688, S. 1689, and S. 1690. These proposed bills deal with the problems of violent crime and the career criminal and a proposal to make it a Federal offense to commit a robbery or a burglary with a firearm after that individual has been convicted in the past of two or more robberies or burglaries. That is S. 1688.

By S. 1689, we would propose to have the Federal Government take over the incarceration of those convicted as habitual criminals under State statutes.

And S. 1690 deals with the aspect of corrections. It seeks to require States to make at least a good faith effort to turn people out of correctional institutions who are not functional illiterates, without a trade or skill. There has been a long history in this country of correctional institutions releasing functional illiterates without a trade or a skill, and it poses no small wonder that they return to a life of crime and a life of violence.

We have a district attorney, Newman Flanagan, to provide testimony on the broad range of questions, but with particular emphasis on the career criminal statute, a matter on which he has had very extensive experience, and brings not only his own views but the views of the National District Attorneys Association, where he was recently elected president.

We are fortunate to have with us as well Mr. Chuck Stone, senior editor and columnist of the Philadelphia Daily News, who has recently had a very unique experience in the Graterford Prison in the suburbs of Philadelphia, personally moving into a very troublesome situation. We will let him tell his own story about the hostage-taking and the near riot conditions which were brought under control significantly as a result of his intervention.

Our third witness this morning will be Mr. Alvin Bronstein, the executive director of the national prison project of the American Civil Liberties Union, accompanied by Irving Joyner of the American Civil Liberties Union.

Senator Kennedy, I believe you have an additional opening statement?

Senator KENNEDY. Thank you, Mr. Chairman.

I think all of us understand that crime is an ever-worsening problem in our society. In Massachusetts and across the Nation our streets have become unsafe for our senior citizens on an evening stroll and our children playing after school. Crime in the city of Boston alone rose by 8.2 percent last year.

Combatting violent crime has been one of my highest priorities. I have introduced, with others, legislation to reform our sentencing procedures and the bail system to eliminate the detention of defendants who are not dangerous, while providing for pretrial incarceration of dangerous suspects. Career criminals should not be free to assault and kill while awaiting trial. People who commit violent crimes should receive the sentences commensurate with the severity of their crimes.

More can be done to fight violent crime without infringing on civil liberties. There are no magic formulas, but tough laws to deal with known criminals and improved law enforcement systems can make a difference. I have worked with the Judiciary Committee to reform the ineffective LEAA program of the 1970's, to revitalize it for the 1980's.

I might mention, Mr. Chairman, when we saw the last LEAA program, we reported it out of the Judiciary Committee without a dissenting vote. It had strong bipartisan support. Two years ago we redesigned the program to target the areas of special need, including criminal and violent juvenile offenders.

Getting tough on crime also requires adequate resources. In light of the ever-shrinking Federal budget, we must determine how Federal resources can be applied to maximize their effectiveness in combatting violent crime. Federal money for training of local law enforcement officials and continued emphasis on organized crime are obviously essential. Under the present condition of the budget, we must proceed with caution in expanding Federal criminal jurisdiction in stretching our budget resources even thinner.

Our efforts in the past to expand Federal jurisdiction in the criminal code reform met with opposition from the State attorneys general, and from district attorneys. So we are going to be very interested in Mr. Flanagan's views about how we can provide help and assistance in local jurisdictions and also meet that concern about expanding Federal jurisdiction. Bail and sentencing reform must also be coupled with the availability of appropriate facilities to house inmates. We must do more to improve the squalid conditions of our prisons which lead inevitably to uprisings which threaten correctional officers and prisoners such as the recent riot in Graterford.

Resources must be made available to provide inmates with literacy and job skills that offer them a real alternative to crime as a livelihood once they have served their sentences. Vocational training is especially important for young offenders. Youthful career offenders are a double loss. Our society loses the valuable contributions of its future citizens and it must pay to incarcerate inmates for many, many years.

Yet the administration would propose to fight its war on crime by deferring the expenditures of all funds appropriated for the juvenile justice program. No funds have been expended for this program since October 1, 1981. This crucial program is in danger of collapse in many areas, including my home State of Massachusetts.

The serious problem of career criminals demands immediate attention, and the measures introduced by Senator Specter are a good starting point to address this problem. And I look forward to these hearings and working with the chairman.

Senator SPECTER. Thank you, Senator Kennedy.

Mr. Flanagan, we welcome you here. Mr. Flanagan attended Boston College and the New England College of Law. He was admitted to the Massachusetts Bar in 1958. He became an assistant district attorney in 1962, and was elected district attorney of Suffolk County, Boston, in 1968. Since 1962 Mr. Flanagan has personally tried over 2,500 criminal cases, which is quite an accomplishment, I can personally attest to, considering his very extensive and paramount administrative duties.

In addition to his duties as district attorney, Mr. Flanagan is a guest lecturer at Harvard Law School, Suffolk College of Law, and the New England College of Law. And as I have already indicated, he is the president-elect of the National District Attorneys Association.

I note, Mr. Flanagan, that in your arrival as an assistant DA in 1962 you missed by a very short time the tenure of one Edward Kennedy as an assistant district attorney in that same office. I commented a moment ago that you and we had the two best jobs around, district attorney and U.S. Senator. Senator Kennedy did not assent to those being the two best jobs around. I do not know if he had——

Senator KENNEDY. There was one other one that I had in mind. [Laughter.]

But I am very happy with this one. [Laughter.]

Senator SPECTER. I suspected he had something else in mind when he did not jump right in. Of course, he would not be totally qualified to comment on the district attorney's job, which is significantly different from assistant. I do not know that he will ever have that chance; he is too far up the ladder.

We do appreciate your coming down, Mr. Flanagan. We welcome you here, and very much look forward to your testimony.

Mr. FLANAGAN. Might I say that I happened to be a legal aid in the office when Ted came aboard. I think he topped the civil service test and that is how he became assistant DA. [Laughter.]

Senator KENNEDY. All for a dollar a year, too.

Mr. FLANAGAN. As a matter of fact, I think it cost him $5. He got a dollar a year and he had to pay $49 to get into the pension program.

Senator KENNEDY. That is right.

Mr. FLANAGAN. So it cost him that money to become an assistant DA. [Laughter.]

That is another whole area, pay for DA's.

STATEMENT OF HON. NEWMAN FLANAGAN, DISTRICT ATTORNEY, SUFFOLK COUNTY, MASS., PRESIDENT-ELECT, NATIONAL DISTRICT ATTORNEYS ASSOCIATION

Mr. FLANAGAN. Mr. Chairman and distinguished members of the subcommittee, I am grateful for the opportunity to appear before this Subcommittee on behalf of the National District Attorneys' Association. There is no elected or appointed official in America today more acutely aware of the Nation's crime problem than is the prosecutor.

Crime, and especially violent crime, is equal in severity to any domestic problem facing our society today, including the economy. In my opinion I think they are top priority. There is a greater danger that crime will destroy this country from within than there is that our Nation will be destroyed by foreign aggression.

There are some dangerously misinformed individuals who speak of crime as a local problem for local solution. While the administration of criminal justice is indeed primarily a local responsibility, crime is a national problem that requires a national strategy, national leadership, and I emphasize, national dollars.

Crime and the fear of crime affects every citizen of this country every day. Where else in a so-called, if you will excuse the expression, free society must citizens literally barricade themselves in their home in fear of violent predators? If law-abiding citizens cannot walk the streets of their own neighborhoods in safety, if law-abiding citizens are not safe within their own homes, we are not really a free society.

And I might add that the career criminal walks the street without the fear of being ripped off.

Fear of becoming a victim of violent crime is rapidly changing the lifestyle of Americans everywhere. Entire sections of some communities have been conceded to the lawless marauders, as the police throw up their hands in disgust and dismay. Citizens are being set upon in their homes and in the streets of once peaceful communities by individuals and gangs of individuals who have no concern for the property rights of others and little concern for human life itself.

We face a grave test in America today—a test of will and fortitude, and a test of our determination to devise a criminal justice system with the primary goal of protecting law-abiding citizens.

Mr. Chairman, you are well aware of the fiscal conditions under which most local governments are struggling today. All taxpayer services are underfinanced, and law enforcement and the administration of justice have suffered proportionately. At a time when crime is rising and violence is rampant, we find ourselves unable to cope in many areas. There are not enough police, courts are backlogged and State prisons are bulging.

There are a number of proposals before this Congress which are held out as partial solutions to our crime problem. Some will afford substantial assistance to local criminal justice agencies and others will have minimal or no effect on crime.

You have authored at least two bills which offer substantial help. Senate bill 1688, which creates a new Federal crime and provides a life sentence for any individual convicted of robbery or burglary while armed, provided the offender has been twice convicted previously for a robbery or burglary.

The National District Attorneys' Association supports this approach, with guarded opinions, provided that there is a requirement for mutual consent between the local prosecutor and the U.S. attorney. This measure will give the local prosecutor, in areas where such is needed, the option to request assistance from the Federal prosecutor where local caseloads are such that the case cannot be handled expeditiously or where State correctional facilities are overburdened to the extent where additional prisoners cannot be housed there. It can also be used in jurisdictions where State law does not provide for an adequate sentence in the case at hand.

Many local court jurisdictions find their caseload so great that it takes an unreasonable length of time to try the burglar or armed robber. And while he is awaiting trial, he is more often than not back in the community on bail, pursuing his vocation of burglary and robbery.

I might say I was delighted to see that the Senators addressed the bail situation, and I think that is a tremendous step forward in the repeat, so-called "charged career criminal," so that that particular individual does not get back on the street and end up with five or six armed robberies before he is tried for the first armed robbery. Too often we see in the major cities of this country where an individual is charged with an armed robbery and gets put back on the street pending his or her trial, and they repeat at least two or three or even more armed robberies before they are faced with the first. And they know that once they are prosecuted and convicted, that all the other armed robberies, generally they get a concurrent sentence. So it does pay them, because they have nothing to lose by going out. They are not going to get any additional sentences for the additional armed robberies that they do commit.

Senate bill 1688 would require that the defendant be tried within a very short period of time. I think that speedy trial makes for good justice. It seems to me that in our society we find the defendants always calling for speedy trials, and yet when they are called for trial they finally manage ways to get continuances.

But we must remember that not only does the defendant have a right to a speedy trial, but so do the law-abiding citizens, and the prosecutor has a right to a speedy trial. That is handicapped by the heavy backlogs that we find in the State courts and in all of the jurisdictions of this country.

The bill also provides for an accelerated appeal process. It seems to me—I looked at television last night. I think it is very meritorious to talk about the past, but when does a case really end? Last night on television a case 50 years ago, in Massachusetts we had a case 60 years ago that was talked about.

I think that the Chief Justice of the Supreme Court has addressed the issue. How long are we going to continue to keep up the litigations and clog the appeal courts for those cases which are coming up of recent origin in the system—an area that has to be addressed.

This approach will remove the robber and the burglar from the community very quickly. We were one of the first counties in the United States to have LEAA funding for career criminal prosecutions. It was called the major violators program, or the MVP. The conviction rate was tremendous.

It seems to me like an analogy to the overall situation we draw, like on the subways in the city of Boston. We have tremendous violent crimes in the subways. Our office, with the cooperation of the police department, of the MTA, put up an Operation Rainbow. We cut the number of crimes down by over 60 percent, because they knew and we knew that the core of individuals that were causing this problem was a group of about 50 or 60 that committed crime after crime after crime, and that if we could get those scavengers off the street and out of the MTA and into confinement centers you would cut down that problem on the public transportation.

It was extremely successful. But once again, it was an area where the funds ran out, and once again it is an area that we have to address.

Since the felon affected by this bill makes a career of robbery and burglary, many committing one or more each day, it does not take a Ph. D. in math to see the number of crimes that can be prevented by using this accelerated procedure for trial and appeal.

Many jurisdictions are under court order to reduce prison populations. In many other jurisdictions prisons are so overcrowded that judges are reluctant to sentence a convicted felon to a long-term sentence. And in still other jurisdictions State law does not provide adequately long sentences for the conduct proscribed in Senate bill 1688.

I might say that I have with me a great number of histories of individuals that have graduated through the system and have plagued the system as we have seen so often to the detriment of the public. I note with interest there was an article in our local paper the day before yesterday and it stated that:

> Economists disagree about almost everything, but one thing they do agree on is the incentive system. People invest their effort and their money wherever they think it will get the greatest reward.
>
> If you understand this, you will know why crime continues to rise in this most affluent of all societies. It is not, as some would have you believe, because of poverty, but because of incentives—and opportunity.
>
> In 1979 there were some 12.2 million crimes committed in the United States, but only 126,000 individuals were sent to jail. Quick mathematics tells you that only one in 100 criminal offenses resulted in incarceration.
>
> Put another way, in 1979 a criminal in the United States had a 99 percent chance of success and only one percent chance of failure. By contrast, in the same year 525,000 businesses were started, some 26,000 filed for bankruptcy, and 7,600 failed completely, for a total failure rate of 6.5 percent.
>
> So while only one crime in 100 gets punished, one business in every 16 is a failure. When you compare the relative effort involved, the miracle is that there are any honest people left. Only the pervasive influence of organized religion and faith keeps our society from falling totally into criminal anarchy.

Just a couple of examples. Here is an individual born April 12 of 1949. He was charged in 1962 with armed robbery. July of 1963, larceny; August of 1963, use without authority, no commitments. Breaking and entering in the night time; 1963 again, August of 1963, larceny; October of 1963, armed robbery; May of 1964, use without authority, two counts; July of 1964, use without authority, two counts. Still no commitments.

Delinquent child, use without authority, in 1965; delinquent child, use without authority in November of 1965; armed robbery in November of 1965; larceny, less than $100, four counts in January of 1966; larceny, less than $100, two counts, January of 1966; unlawful use of authority; larceny from a person in January of 1966. Still no commitment.

March of 1966, robbery while armed; March of 1966, robbery while armed.

Finally, he is treated as an adult. October of 1967, assault and battery with a dangerous weapon; unlawful carrying of a firearm. Finally, one commitment for a year. Use without authority, 1967;

rape of a child under the age of 16, 1968; armed robbery in 1970, six months committed.

Use without authority in 1970; kidnapping in 1971; rape in 1971; assault with intent to rape in 1971; motor vehicle violations in 1978 and 1980; armed robbery in 1980; use without authority in 1980; assault and battery, dangerous weapon, two counts in 1980. And finally, murder in 1980.

He finally made the top shelf.

Another example—these are just two. I could bring down here, unfortunately, hundreds and hundreds that go through this system, who play this system that we have, know the system better than the prosecutors and play the system, know that they are not going to be apprehended; if they're apprehended, that they're not going to go away.

Example. a child born in 1954; use without authority, 1969; assault and battery, 1969; receiving stolen goods in 1969; a month later, assault and battery, three counts; a month later, assault and battery, three counts. No commitments.

Assault and battery in 1970; attempted B & E, 1970; assault with a dangerous weapon, 1970; threats, 1971; robbery, 1971; B & E, 1971; larceny from a person, probably a handbag snatch, 1971. Still I do not see a commitment.

December of 1971, unauthorized use. Finally an adult. May 1972, robbery.

Senator SPECTER. What is the unauthorized use? Is that a drug charge?

Mr. FLANAGAN. Motor vehicle, stolen cars.

Unauthorized use, 1972; assault and battery, armed robbery. He finally got 5 years and a day, sentenced to Concord, was out in a year.

Senator SPECTER. What was that charge?

Mr. FLANAGAN. That was an armed robbery.

Violation of chapter 269, section 1, extortion. He got 6 months probation, to be served from and after the sentence he was then serving.

November 1973, use without authority, motor vehicles; January 1974, rape; January 1974, armed robbery. Finally, sentenced to life imprisonment for armed robbery, kidnapping, assault and battery with a dangerous weapon, unnatural act, rape, life sentences concurrent. Conspiracy to rob, placed on file; breaking and entering a dwelling house; committing larceny, putting in fear, 9 to 10, Walpole; assault and battery with a dangerous weapon, 2½ to 5; robbery while armed and masked, 12 to 20 from and after.

Entering a dwelling house armed and assault, 1974, life imprisonment.

I have not checked it, but I would assume he may be well on the streets again, for all we know.

We say in Massachusetts we have what we call a famous freedom trail. I know Philadelphia has their freedom trail, but we are a little prejudiced; we think ours is a little more important than Philadelphia's. We think the freedom trail starts at the Massachusetts Correctional Institution at Walpole.

Senate bill 1689 is also strongly supported by the National District Attorneys Association. This legislation could also provide significant assistance to State correctional institutions. This bill is also directed at the individual who makes a career of committing crime.

Senate bill 1689 provides for the housing of State prisoners in Federal correctional facilities at Federal expense where one is sentenced to life imprisonment under a State habitual offender statute.

As I mentioned before, there is a great reluctance on the part of judges in some jurisdictions to sentence prisoners to long terms in overcrowded State facilities. This legislation would encourage the local judge to hand down a more appropriate sentence when confronted with the removal of a career criminal from the community.

Mr. Chairman, while the National District Attorneys Association supports and encourages Federal, State and local cooperation in our efforts to bring violent crime under control, we have noted with surprise and dismay a recent move to reduce the budget of various Federal criminal justice agencies.

Our association feels very strongly that the administration and Congress should be promoting increases in budgets of Federal criminal justice agencies to give the Federal Government the means to vigorously investigate and prosecute cases already within the Federal jurisdiction. And we feel this should be done if there is an expansion of Federal jurisdiction to traditionally local offenses. There must be a Federal commitment to utilize current resources more effectively, as well as a commitment to vigorously pursue additional funding where necessary.

I note with interest that the Violence Task Force Committee recommended to the President, among many, many things, that the Federal Government should supply $2 billion to the States to build additional places of confinement. It sounds like a lot of money, but to me it seems that it is money extremely well spent.

With all due respect to our distinguished President, he speaks well about the area of prosecutors, but to some degree he has to put some money where his mouth is.

I think that the problem that developed over the so-called 1960's and 1970's when we had the baby boom, the American people looked forward, and what did they do? They built additional schools, they built additional shopping centers, they built additional fire stations, they built additional housing. But they forgot to build additional places of confinement for those individuals who were going to play the system and violate the law continually.

It is going to cost money. We cannot talk about confinement unless we talk also about places to confine. And I think the issue is very, very simply put. Where are we going to place our money? The people of this country have to face up to the fact. It has to be spent.

Where do you spend it? I am not talking fictitious. I am talking reality, when nobody, especially people of greater age than I am, are unable to walk the streets, not at midnight but at high noon, without the fear that their handbag is going to be ripped off, their car is going to be stolen, and when they get home their house has been broken into.

I ask the people and I ask this Congress, where do you spend your money? Do the people spend it for additional premiums on fire and theft on their home, fire and theft on their car? That load of meat that was stolen, built into it is the expense you pay as a consumer. How much is it worth to the people of a so-called free society to be able to walk their streets at high noon without those fears I previously spoke about?

I think the answer is simple. We have to start taking bars off people's homes and put them on places where those individuals that have been playing the system—to wit, the career criminal—should be confined. I suggest to this Congress and to this particular committee, Mr. Chairman, that if you were aware that nuclear warheads were pointed to the capital or to this country from a foreign country, that you would find the money and the equipment forthwith to remedy the situation.

Well, I suggest that in the major cities of this country not nuclear warheads but individuals are firing day-in and day-out at the law-abiding citizens of this country; that the prisons are ready to explode all over this country. And I suggest that the Congress should act in that area.

I will be happy to respond, Mr. Chairman. I again want to express my sincere appreciation for the opportunity to appear before this committee. I also want to commend you and the other members of this committee for trying to do something to return our streets and our communities to those who respect the rights of their fellow man and abide by the rules laid down for the governance of a civilized society.

I will be glad to answer any questions.

Senator **Specter**. Thank you very much, Mr. Flanagan.

The two cases you cited in your testimony—and you said you could have brought hundreds with you, something that I know full well from my own experience as a district attorney. As you enumerated the serious charges—robbery, rape, aggravated assaults and battery—why, in your opinion, Mr. Flanagan, do the judges refuse to impose tough sentences on these tough criminals where they have been convicted repeatedly of serious violent crimes?

Mr. **Flanagan**. I think I can only speak locally. There is great disparity in sentencing in the Commonwealth of Massachusetts. I for one am a strong believer that there should be definitely a certainty of sentence. The amount of time I do not think is as important as there should be certainty of sentencing.

In our jurisdiction, for armed robbery you can get anything from straight probation to life imprisonment. And nobody enjoys sending anybody else away. If they do, they should not be in a position where they can do it.

But in today's society you have to face up to the fact that if they do not do it, things, as bad as they are, are going to get a lot worse. I think we have to get tougher. That is basically the answer.

I see so often when an individual puts on a set of robes, it does not change that individual. He or she still does not enjoy sending somebody away. And it is very difficult when they look out and they say, I knew your mother, I knew your father, I grew up in your community, I know your lawyer. It makes it that much more difficult.

But they have to face up to the fact that they have to start sending more people away. My position is, I think "mandatory minimum" is the answer to that situation.

Senator SPECTER. But it has become a national scandal, really, that sentencing is inadequate, even with crimes of violence and repeaters who come before the courts again and again and again. I have seen the case histories just as you have.

This is always a question which I ask formally on the record, and when you and I and other prosecutors meet privately we frequently talk about the question. Why do judges not sentence? And no one really has an adequate answer overall as to why the judges do not sentence.

But that certainly does seem to be a common experience that we find, does it not?

Mr. FLANAGAN. Yes. One of the problems—and I do not say this because—the last poll in Massachusetts which was taken, and I do not want to give them free publicity—but the Boston Globe took a poll of 90 percent of the people, and the law-abiding citizens were in favor of some type of mandatory sentence.

The system has been played by the criminal, and particularly if we go into the juvenile criminal. And I think this committee has identified the repeat offender of Massachusetts. I have a paper that I think the committee received a copy of, on the statistics. And I indicated that you do have the profile of a repeat violator.

When you were a child and when I was a child, if you did something wrong you were punished. If you took a cookie out of the cookie jar and you were not supposed to, your mother or your father punished you.

What happened, I think, over the last decade and a half was that when somebody is incarcerated—and when I went to college and studied sociology and penology, the reasons somebody was incarcerated were general deterrence, specific deterrence, rehabilitation. And that is all they thought about in the 1960's and 1970's. But the other element was forgotten, punishment. You should be punished.

Now, that sounds bad, but it is the reality of life. And they know they are not going to be punished. And that is why you get these individuals constantly ripping off, ripping off, ripping off. And they know that the system as it presently is is a joke.

Senator SPECTER. Mr. Flanagan, do you believe that the career criminals to a significant degree are thoughtful and would respond to deterrence if they knew that they faced the certainty, as you characterize it, and the toughness of a life sentence after committing these multiple offenses of violence?

Mr. FLANAGAN. Hopefully, some would. But I am afraid that there is a tremendous amount of them out there that just play the system, and the only deterrence you are going to get is specific deterrence, that they are not going to do anything while they get locked up.

Senator SPECTER. But if it becomes known, as you have testified, that punishment is going to be certain, and if you add to it the life sentence for the career criminal, do you think that that will send a message to them?

Mr. FLANAGAN. Obviously you are not going to stop it all, but I think it is a great step in the right direction, absolutely.

Senator **Specter**. You testified about a core of some 50 or 60 who committed the vast number of acts of violence on your public transit system. Have you found that there is a hard core generally which commits a tremendous number of robberies or burglaries?

Mr. **Flanagan**. There is no question we have that hard core. I just prosecuted two individuals who started in the justice system, which I think is another area that the Congress has to face. We know that the hard core criminal does not start when he turns 17 or 18. He is well into a system that has been pampering him prior to that age, so that there is obviously a hard core of individuals that are committing most of the crime in our society.

That is what I think that this legislation focuses in on.

Senator **Specter**. Mr. Flanagan, there have been estimates that as much as 50 to 70 percent of serious robberies and burglaries are committed by the career criminals. Would you care to give a professional judgment in your area or nationwide on that subject?

Mr. **Flanagan**. I would think that that would probably be the area where you would be. I would think that 10 percent of the criminals are committing almost 80 percent of the crime. You know, you have the career criminal who is out there every day on the street, and these individuals that I prosecuted recently, they just look at houses and at random they just went in the houses and just ripped them off.

And unfortunately for them and unfortunately for the victim, they went into the house where there was a girl asleep and they ended up killing her. That individual has just been sentenced to life in prison.

Senator **Specter**. Mr. Flanagan, on the question of consent, mutual consent and the coordination between local prosecutors, district attorneys like yourself, and U.S. Attorneys, there has recently been a recommendation of the Attorney General's Task Force on Violent Crime relating to coordinating committees in each Federal district.

The Attorney General adopted that recommendation on July 21 of this year and issued an order to establish those coordinating committees. Has that been in effect long enough for you to have had experience with how it is working out in your area?

Mr. **Flanagan**. I might say that prior to this Administration I had complete cooperation between the Federal and the local in Massachusetts. I think it is a good thing. I think far too often we have seen that professional pride, where we have something and you do not have something, we are not going to give you something.

Senator **Specter**. There are plenty of career criminals to divide up, are there not?

Mr. **Flanagan**. There is plenty of business. As a matter of fact, as that article I read to you from the newspaper stated, we are in the best business in the world if you are looking for business. We have got more than we can handle, and it is increasing.

Senator **Specter**. So on the issue of coordination or consent, the legislation does provide that the matters will first be submitted to the local prosecutor; that that is a priority matter.

Mr. **Flanagan**. With regard to that, we had a board of directors meeting last month, and that was an extremely top priority of our concern with this legislation. We are not satisfied that there should be any drastic expansion of the Federal jurisdiction. But in cases like this, where we need assistance in the local levels, this is the type of legislation that would be beneficial to us.

But we do not want the Federal U.S. attorney to just at random take his actions or her actions. I think it has to be by mutual consent of both the local with the Federal.

Senator **Specter**. We have tried to tailor this just to robberies and burglaries, those being the two most important aspects of street crime. I am sure you would concur that if you had to pick the kernel of the problem, it would be the repeat robber and burglar.

Mr. **Flanagan**. The housebreaker has just gone off the scale, unbelievably.

Senator **Specter**. And the tradition between local prosecutors and U.S. attorneys, as you have expressed it and as I have found it too and as a generalization in our profession is that it does work out. These are not big, celebrated cases and there are so many that, as I say, there are enough to go around.

Would it be your expectation that with the mutual consent approach, with consultation, that this would be an area where there would not be a fracture of Federal-State relations, but one which could be worked out for the Federal Government to supplement in this very limited and important area.

Mr. **Flanagan**. Absolutely. With the mutual consent, the District Attorneys Association is in full favor of this legislation.

Senator **Specter**. Just one final question, Mr. Flanagan. I note that Massachusetts has an habitual offender statute. It is defined as a person convicted of a felony, having previously been convicted of two felonies of not less than 3 years each.

How does your habitual offender statute work out in practice? Is it invoked frequently? And if so, with what result?

Mr. **Flanagan**. It is not invoked frequently. One of the reasons is you can spend an awful lot of time in prosecution in this area and the defendant does not end up with anything more than he would have gotten if he was charged with the substantive crime.

Senator **Specter**. Because it is a discretionary area?

Mr. **Flanagan**. Yes.

Senator **Specter**. It provides for a life sentence?

Mr. **Flanagan**. We are back into the revolving situation where they are just not being sent away.

Senator **Specter**. That is the experience I had. Pennsylvania had an habitual offender statute that called for a fourth offense, and on the occasions we would use it we would not even get the maximum for robbery or burglary, which under Pennsylvania law provides for a 20-year sentence. So that the habitual offender statutes, notwithstanding their existence in some 45 States, have been ineffective. I am interested in hearing your experience in Massachusetts.

Mr. **Flanagan**. I think from my understanding of the States, I think Texas is one of the rare States that uses the habitual statute to any success.

Senator **Specter**. You often hear of the 99 to 299-year sentence down there. I wonder how successful the Texas prosecutors are in getting those sentences carried out.

Mr. **Flanagan**. I think you must talk with one of the Texas prosecutors. The State is so big, there are plenty there.

Senator **Specter**. It is like the old joke: The guy is 60 years old and he gets a 99-year sentence, and he says, "Judge, I am 60; I cannot do it." And the judge says: "Do the best you can." [Laughter.]

Mr. **Flanagan**. I might say, Mr. Chairman, that Senate bill 1422, which is presently in this Congress, is a bill that I think in this area might be of some benefit. It is to amend the Federal Property and Administrative Services Act of 1949 to donate certain Government-owned land; namely, military facilities, for prison use to States.

Hearings have been held by the full Committee on Governmental Affairs and the bill is scheduled to be reported out by that committee. Those are areas that I think have to be addressed.

The problem in a nutshell is that crime pays. The career criminal knows that crime pays and he is probably in a financial business that is untaxable and he does extremely well.

In the area of Federal jurisdiction, there is tremendous need for additional work in the present area by the Federal U.S. attorney's office in the area of drugs, et cetera, where they have present jurisdiction.

Senator **Specter**. Mr. Flanagan, thank you very much for coming to Washington today to provide your very illuminating testimony.

[The prepared statement of Mr. Flanagan follows:]

PREPARED STATEMENT OF NEWMAN FLANAGAN

Mr. Chairman, distinguished members of the Subcommittee:

I am grateful for the opportunity to appear before this subcommittee on behalf of the National District Attorneys Association.

There is no elected or appointed official in America today more acutely aware of the nation's crime problem than is the prosecutor.

Crime, especially violent crime, is equal in severity to any domestic problem facing our society today, including the economy.

There is a greater danger that crime will destroy this country from within than there is that our nation will be destroyed by foreign aggression.

There are some dangerously misinformed individuals who speak of crime as a "local" problem for local solution. While the administration of criminal justice is, indeed, primarily a local responsibility, crime is a national problem that requires a national strategy, national leadership and national dollars.

Crime, and the fear of crime, affects every citizen of this country every day. Where else in a free society must citizens literally barricade themselves in their home in fear of violent predators. If law abiding citizens cannot walk the streets of their own neighborhoods in safety, if law abiding citizens are not safe within their own homes, we are not really a free society.

Fear of becoming a victim of violent crime is rapidly changing the life style of Americans everywhere. Entire sections of some communities have been conceded to lawless marauders as the police throw up their hands in disgust and dismay. Citizens are being set upon in their homes and in the streets of once peaceful communities by individuals and gangs of individuals who have no concern for the property rights of others and little concern for human life itself.

We face a grave test in America today - a test of will and fortitude, and a test of our determination to devise a criminal justice system with the primary goal of protecting law abiding citizens.

Mr. Chairman, you are well aware of the fiscal conditions under which most local governments are struggling today. All taxpayer services are underfinanced, and law enforcement and the administration of justice has suffered proportionately. At a time when crime is rising and violence is rampant, we find ourselves unable to cope in many areas. There are not enough police, courts are backlogged and state prisons are bulging.

There are a number of proposals before this Congress which are held out as partial solutions to our crime problem. Some will afford substantial assistance to local criminal justice agencies, others will have minimal or no effect on crime.

You have authored at least two bills which offer substantial help.

S1688 creates a new federal crime and provides a life sentence for any individual convicted of robbery or burglary while armed, provided the offender has been twice convicted previously for a robbery or burglary.

The National District Attorneys Association supports this approach provided there is a requirement for mutual consent between the local prosecutor and the United States Attorney. This measure will give the local prosecutor, in areas where such is needed, the option to request assistance from the federal prosecutor where local case loads are such that the case cannot be handled expeditiously, or where state correctional facilities are overburdened to the extent where additional prisoners cannot be housed there. It can also be used in jurisdictions where state law does not provide for an adequate sentence in the case at hand.

Many local court jurisdictions find their case load so great that it takes an unreasonable length of time to try the burglar or armed robber. And while he is awaiting trial, he is, more often than not, back in the community on bail pursuing his vocation of burglary and robbery.

Senate bill 1688 would require that the defendant be tried within a very short period of time. It also provides for an accelerated appeal process. This approach will remove the robber and the burglar from the community very quickly. Since the felons affected by this bill make a career of robbery and burglary, many committing one or more each day, it does not take a Ph.D. in math to see the number of crimes that can be prevented by using this accelerated procedure for trial and appeal.

Many jurisdictions are under court order to reduce prison populations. In many other jurisdictions prisons are so overcrowded that judges are reluctant to sentence a convicted felon to a long term sentence. And in still other jurisdictions, state law does not provide adequately long sentences for the conduct proscribed in S1688.

Senate bill 1689 is also strongly supported by the National District Attorneys Association. This legislation could also provide significant assistance to state correctional systems. This bill is also directed at the individual who makes a career of committing crime.

S1689 provides for the housing of state prisoners in federal correctional facilities at federal expense where one is sentenced to life imprisonment under a state habitual offender statute.

As I mentioned before, there is great reluctance on the part of judges in some jurisdictions to sentence prisoners to long terms in overcrowded state facilities. This legislation would encourage the local judge to hand down a more appropriate sentence when confronted with the removal of a career criminal from the community.

Mr. Chairman, while the National District Attorneys Association supports and encourages federal/state/local cooperation in our efforts to bring violent crime under control, we have noted with surprise and dismay a recent move to reduce the budgets of various federal criminal justice agencies.

Our Association feels very strongly that the Administration and Congress should be promoting increases in budgets of federal criminal justice agencies to give the federal government the means to vigorously investigate and prosecute cases already within the federal jurisdiction. And we feel this should be done if there is an expansion of federal jurisdiction to traditionally local offenses. There must be a federal committment to utilize current resources more effectively as well as a committment to vigorously pursue additional funding where necessary.

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Mr. Chairman, I want to again express my sincere appreciation for the opportunity to appear before this committee. I also want to commend you and other members of this committee for trying to do something to return our streets and communities to those who respect the rights of their fellow man and abide by the rules laid down for the governance of a civilized society.

I will be happy to respond to any questions you may have.

Senator SPECTER. Mr. Chuck Stone, would you step forward as our next witness?

It is a great pleasure to welcome Mr. Stone to this hearing. Mr. Stone received his A.B. in political science and economics at Wesleyan University, and a masters in sociology at the University of Chicago. He is currently the senior editor and columnist for the Philadelphia Daily News. He has experience on Capitol Hill, having served as special assistant to Congressman Adam Clayton Powell in the House of Representatives.

Mr. Stone has lectured extensively at colleges and universities across the country. He recently came into national prominence with his extraordinary work at Graterford. He has published three books. "Tell It Like It Is" in 1968, "Black Political Power" in 1968, "King Strut" in 1970.

He is a contributing author to a series of books. He has a long list of community activities and boards and journalistic and communications activities and awards, which if we enumerated them seriatim would take all of the time which could be allotted during this day to his testimony.

Beyond that, he is a longstanding friend of mine, and it is a great pleasure to ask him questions for a change, instead of being asked questions by him, as he has on many occasions in a very pleasant manner as a member of the fourth estate.

So Chuck, we welcome you here and look forward to your testimony on the question of corrections and rehabilitation and crime control in this country.

STATEMENT OF CHUCK STONE, SENIOR EDITOR AND COLUMNIST, PHILADELPHIA DAILY NEWS

Mr. STONE. Thank you so much for your gracious remarks. I do not want to make it look like a mutual admiration society, but you know through my columns I have long been an admirer of yours.

In the last 4 years, Senator, and 2 months, a total of 12 criminals, 7 murderers, 3 escaped prisoners, and 2 shooting suspects, have turned themselves in to me in order to surrender to the police. But none of those negotiations prepared me for last month's 2-day tramatic ordeal in helping to negotiate the surrender of six hostages held at Graterford Prison.

That experience, along with considerable correspondence and ongoing contacts with prison inmates, bears directly on the three proposed crime control bills before this subcommittee.

The first two bills would benefit enormously the prison systems of the States by providing both financial and housing relief. As you know, New York State and Pennsylvania prison systems are bulging at their population seams. Some of the prisons are so overcrowded that inmate tensions are being exacerbated to a boiling point, capable of endangering prison security—eroding prison security and endangering human lives.

Senate bills 1688 and 1689 may not necessarily precipitate massive reductions in the State prison populations, but they will help to decrease critical overcrowding and correspondingly help increase state prison budgets. In these difficult economic times, the American people shortsightedly and unfortunately do not have the slightest interest in appropriating more moneys for prisons. This resistance is paradoxical because it comes despite a hardening national attitude toward criminals and a corresponding escalation in violent crimes.

The third proposed bill, S. 1690, may encounter some public resistance. I have long been an unyielding advocate of rehabilitation activities for prison inmates; yet, a growing number of prison experts reject such activities as unworkable and unproductive. I remain stubbornly convinced that they are.

This past Monday I interviewed four prison guards from the Philadelphia prison system in my office, under the stipulation that they would only be identified as A, B, C and D. They were interracial. Their average terms of service were 6½ years, ranging from 3 years to 12 years. All four were intelligent and articulate. Their collective opinions appear in my column today under the heading "Prisons Called Corrupt and Ineffective."

All four guards vigorously rejected, however, rehabilitation as unworkable. Said one: "The only people I have found who have stopped being criminals decided themselves to stop."

Yet all four guards enthusiastically endorsed work release training programs, urged that jobs be found for paroled or released prisoners, and, in a seeming contradiction, passionately advocated that training and skills be given to inmates to help them find jobs.

In a laughing comment on Richard Pryor's routine about a released prisoner, one guard said "and I do not mean stamping out license plates." Mr. Chairman, I would like to conclude with a few observations about my Graterford experience.

First of all, these are terrible, sometimes inhuman physical conditions. Rats run around in the cells.

I remember, I was sitting there in the last session. There were three negotiating sessions, one Sunday night, one Monday morning, and then the last one Monday afternoon. In that last session I became aware of some activity on my left on the floor. I looked down there and there were eight or nine rats running around along on the baseboard.

When I looked down and I said, "my God." And Jo-Jo Bowen said, "they're in our cells all the time; now you know what we have to face." Cockroaches—he said he would take food in the cell at night and put it in a corner so the cockroaches would attack the food there and not crawl all over them in the blankets and in their beds.

The food is so bad that some prisoners never eat in the messhalls. Overcrowding, with two men in tiny cells barely large enough for one; and crumbling, leaky buildings.

But as miserable as these conditions are, I am convinced that the human factors, administrators and guards, override the physical inadequacies. During the Graterford negotiations, four inmate hostage takers repeatedly and angrily denounced what they saw as unfair treatment, racist practices resulting in differential discipline, and administrative abuse.

In my first negotiating session with Jo-Jo Bowen and his three colleagues, he went into a long obscene diatribe about Graterford. He shouted at me, quote, "It wasn't the physical aspect that made me go to the wall." I apologize for this use of the word, but I think it gives the flavor of what they were saying. Rather than my saying "expletive," he said, "I couldn't handle this shit again." But he also said: "The conditions here sum up to dying. The food is screwed up, everything is screwed up in Graterford. The cells, the sinks are falling apart. I wanted to be free of oppression and this foolishness. I ain't no angel, but I'm here to do time. I'll do my time, but treat me like a man."

Then he talked about one incident in which he was going through to the kitchen. The guard stopped him and began to scold him and insult him. And he proved he belonged in that area, and the guard then apologized to him. And then Jo-Jo looked at me and he kind of smiled: "And he called me a mother-fucking boy."

It was the dehumanization of being called a "boy" that stayed with him, rather than the guard stopping him from going into an area where he was unauthorized.

He continued. "At least 150 people on my block needs help." He said in the morning when he would leave his cell there would be men standing there on drugs, medical drugs, and they would just stand there mumbling. He would come back at lunch and they were still standing there mumbling. He would come back at dinnertime and they were still standing there mumbling.

Then Calvin Williams, who was the second ringleader, Calvin Pepper Williams said. "You see guys walking around all day in a catatonic state." He said: "I ain't afraid of dying, but I do not want to be sitting in some movie in the messhall when some guy goes off and then I get killed. I do not want to go that way."

Again, the inhumanity of what they see. They talked about one inmate who was deranged, and they said there are 300 or 400 people who are deranged, because they closed Fairview because of the Inquirer's excellent, Pulitzer Prize-winning series on Fairview.

He said one man came in and got his food and as he walked to the table, the mess table, he threw it on the floor. Then he got up and went to the garbage can, picked up food from the garbage can, put it on his plate and began eating the food out of the garbage can. I heard that two or three times.

They said that was bad enough, but the two guards just stood there and laughed. They thought it was a big joke.

But in the most paradoxical behavior of all these hostage-takers who were serving life sentences for grisly murders, angrily expressed distrust of the prison officials because they had failed to bring medicine for a diabetic and an asthmatic hostage to the kitchen, where the hostages were being held.

Williams said. "If they treat their own people like this, what do you think they are going to do to us?"

But all four of the hostage-takers requested transfer to the Federal prison and that was part of the agreement. Jo-Jo Bowen was convinced he would have been killed had he been returned to Graterford. This possibility was confirmed to me by a prison official. He even admitted that some guards might welcome an excuse to kill Bowen, who had killed both a policeman, and a warden, and a deputy warden at Homesburg, or have Jo-Jo Bowen killed.

But the guard also indicated that some prisoners might kill Bowen. I believed that because as I was walking from the kitchen hostage area outside to the administration building, about a quarter of a mile through the prison yard, some of the inmates recognized me and yelled out of the windows. They said. "Let us out, we will take care of Bowen, we will get rid of him."

And they were ready to explode after having been confined for 5 days in their cells during the hostage confinement.

Mr. Chairman, the Graterford hostage siege occurred because Graterford is symptomatic of the sickness in our prison system. The four guards I interviewed this past Monday summed up the prisons as being riddled with corruption, smuggling operations, and Jo-Jo Bowen's four guns were smuggled in there, a double-barreled shotgun, a .38 pistol, a .22 pistol, and a single-barreled shotgun.

During the negotiations I sat as far as this young lady here with Jo-Jo standing in front of me. He held the double-barreled shotgun on me while Pepper Williams had the .38, Ellison had the .22, and then on my left Graham had the single-barreled shotgun in the doorway pointed toward me.

Senator SPECTER. How did you feel about facing all that firepower?

Mr. STONE. It was a frightening experience. At one point I thought—and Jo-Jo's brother, Jeff Bowen, was sitting next to me, and he thought the same thing, that we might be killed. I began to think of things 4 and 5 days later.

For example, Sam McKeil, the president of PNI, was congratulating me a few days later. I remembered for the first time, that as I picked up my folding chair to walk down the corridor to where Jo-Jo Bowen was, I thought to myself, I am carrying my own execution.

And at one point, he would just flare into a violent diatribe. He said. "I am ready to go. I am tired of this shit. I am going to go and I am going to take everybody with me. I am going to take that black man," pointing to a guard sitting there as a hostage. "I am going to take him with me. We are all going to go."

When he said that, Jeff said to himself, he thought we were both going to get killed at that point.

The second session in the morning, I was convinced we were going to do it. I was really serenely happy about that. But I was also convinced, the way Jo-Jo was talking, that he was prepared to die, that he might have gone out shooting. He would have to make one last symbolic macho act.

After we concluded the negotiations and he agreed to everything, he said. "I do not want to give up my steel." I said, "Well, you have got to give the guns up." He said, "Well, I am not going to give them the ammunition. I am going to empty it." I said, "Where?" He said, "Right here." I thought he meant in the kitchen.

He felt the need to fire the guns down the corridor. We all got out of the way. We went in the bathroom. I remember it humorously now, but we were so frightened. Jo-Jo Bowen's brother—we were both in the bathroom with a guard, a State patrolman guarding us. He stood in the corner like a little boy who had been bad. He just did not want to face what was happening.

And then these guns all went off, the double-barrel, single-barrel. It sounded like cannon roars. And then he finally said, "OK, everything is over." He turned in the guns, the hostages came out.

It was again just an incredible experience.

Senator SPECTER. As you testify about that particular conduct by Bowen, Mr. Stone, would you care to give an opinion as to whether a man like Jo-Jo Bowen is susceptible in any stretch of possibility to rehabilitation and return to society?

Mr. STONE. I do not think he is. I say that reluctantly because I did get involved with him. I got very involved with his mother. She came to my house. I interviewed her. She is a lovely woman. I just think there is something in him that he has not been able to resolve.

He came out of prison a violent man. He had not killed anybody until he went into prison. He came out a violent man.

I do not know if he is capable of it, but I doubt it. There are some people who just cannot be rehabilitated. They will admit it as well as the guards.

Senator SPECTER. Did you discuss that subject in any way with Jo-Jo Bowen himself?

Mr. STONE. No, I did not want to do that. My attitude was, what can I do to help you get out of here, surrender. But I think some people are incapable of being rehabilitated. We have criminals who are just violent, such as repeat rapists, recidivists. The system cannot help them. Sometimes it is brain damage, other times it is what I call unspent rage which is contained within them and recurs in cycles.

But there are people, as the guards said who denounce rehabilitation, who pay their debt to society and need a job. So many exinmates cannot find jobs, so they turn to crime to survive. They become what we call short-term criminals.

And these guards who I interviewed were critical of the prison system as being a series of failures and very ineffective.

Senator SPECTER. On that subject, when I was district attorney I visited all of Pennsylvania's so-called correctional institutions. I think it is a misnomer because they in fact do not correct. And I visited Graterford on many occasions, doing pardon and parole work as an assistant DA some 20 years ago, and visited into the 1970's a decade ago in the other prisons, Western State Penitentiary, Huntington and Rockford, Dulles, Muncy.

And I was appalled and said so at the time, about the fact that they would turn out illiterates who had no vocational training, functional illiterates without a skill, so that it would be no surprise that those individuals would return to a life of crime.

And I agree with you and have. The whole point about rehabilitation has gone through many cycles. Twenty years ago the sociologists would talk only about rehabilitation, about the harshness of punishment or incarceration without rehabilitation. Those same sociologists largely did about-faces and the literature for the 1970's has been that rehabilitation is hopeless.

Mr. STONE. It is not hopeless. We have a famous judge out in Los Angeles who had been in jail for 8 or 9 years, very prominent there. There are any number of examples of people who have come out of prison and been rehabilitated and made a contribution to society.

We had an article in our paper just a few days ago about a fellow in a southern State who skipped a chain gang and led a life of exemplary law-abiding behavior over 17 years.

Senator SPECTER. What did you find from your observations about the issue of rehabilitation? Is there anything done at Graterford by way of job training or education or rehabilitation that you observed?

Mr. STONE. They have that. There are some educational measures. What some of the inmates do, they do it to get out of work. They are not interested in really learning.

But the functional illiterates are the problem. They cannot even get a drivers license, for example, to drive a car. They cannot fill out an employment application. If we could teach them what we call minimum competency skills, I think we could reduce crime.

Senator SPECTER. Is that being done at Graterford at the present time?

Mr. STONE. There is no organized program, as I understand bill 1690, to train and educate them. But the main thing is to give them the minimum educational competence and that is not being done at Graterford.

There are so many inmates who get out of prison who have acquired some kind of skill, upholstering or tailoring or cooking or something of that nature, or who may have gotten a GED while studying, but they cannot find a job because they are ex-convicts.

I read in this morning's Washington Post my friend, ex-Congressman Charles Diggs, was turned down in Maryland to get an undertaker's license. And his attorney pointed out Mr. Diggs has rehabilitated himself and he should have the opportunity. I agree.

If a professional person who has served his time cannot have the opportunity to earn money, what is he going to do? I have mixed feelings about how long you punish somebody for having committed a crime.

Senator SPECTER. Oh, I think it is possible for the State to provide those minimal training lines, educational and vocational training. But how do you deal with the issue of job opportunities once people are on the outside? Educate the employers?

Mr. STONE. Educate the employers and try to find examples of ex-inmates. It is like alcoholism, to be a recovered alcoholic. There is still a stain to have undergone mental treatment for mental disorders, even though you have recovered.

If we have those sociological stigmas for those types of noncriminal behaviors, what must people feel when they see a criminal, a convict coming up?

In my job as a former editor of three newspapers, at two of those newspapers I hired two ex-convicts who turned out to be very fine reporters. And one, after I hired him as a reporter, committed a crime, was locked up, came to me, apologized. I kept him on. He did an excellent job. He was a white man. I was editor of the Chicago Daily Defender, a black newspaper. He had been in prison with Sonny Liston. Today he is living in New Mexico, married and is a security guard. He has been there for the last 9 years. We correspond periodically.

So I have had some personal contact in hiring ex-convicts. I have no problem with it. But you have got to convince other people to do this.

At the Daily News in the cafeteria I ran into a young man who had been at Graterford working in the kitchen as a busboy. I am proud to say we did that. You cannot hire them in secure positions, but you can hire ex-inmates in positions where they can earn a living and have a minimum of human dignity.

Senator **Specter**. Mr. Stone, what do you think the outcome will be of the Graterford incident? What steps will be taken at Graterford to prevent its recurrence, if anything?

Mr. **Stone**. After my interview with those four prison guards, I am not sure anything can be done. As you know, Governor Thornburgh has convened a commission headed up by Judge Sirica. They are going to investigate what happened, find out how the guns got in there. But when those guards tell me you can smuggle in anything at any time, narcotics can be purchased at any prison as much as you want, narcotics are easily available—I am not sure anything can be done.

How do you stop the flow of the illegality, the corruption? I really do not know.

Senator **Specter**. When you talk about corruption, what do you mean, Mr. Stone? Guards being paid off, that sort of thing?

Mr. **Stone**. Oh, yes; how do you get contraband in there? Somebody is bringing it in there.

Senator **Specter**. The question is how to identify who is taking the payoff.

Mr. **Stone**. I received about 40 letters from inmates at Graterford after the siege was over. One inmate identified one prison official, high ranking, whom he felt was responsible for the guns getting in. I do not believe that, but nevertheless I will turn it over to that commission when they investigate that siege.

I just think you have to keep hammering away at those two things. One is how to make the prison system responsible to the people. You will never root out corruption any more than we have rooted out corruption in our society with Abscam and Watergate. They seem to be as common to us as smuggling and corruption are indigenous to the prison.

Guards only earn between $16,000 and $17,000, and if they can make another $20,000 to $25,000 a year smuggling in narcotics or other contraband, paying off with cigarettes and so forth, a lot of guards will.

Senator **Specter**. The consequences of Graterford were very different from the consequences of Attica. I know that that is a thought that went through everybody's mind, when there were some, what, 30 or 40 hostages held?

Mr. **Stone**. Initially I think there were 37.

Senator **Specter**. How do you account for—aside from your own good works, or including your own good works—for the success in avoiding an Attica there?

Mr. **Stone**. I think one thing I was remiss in not indicating in my testimony was the presence of the Federal officials. We can be proud of the Federal prison officials. They are extraordinary professionals. It was so comforting and reassuring to work with them, particularly Steve Grzegorek, who is the regional director for the Federal prison system, located in Philadelphia, and Dr. Steven Keaney, a Federal psychiatrist from Petersburg.

Senator **Specter**. What did they do specifically, Mr. Stone?

Mr. STONE. They were experienced and well trained. They had a lot of experience in negotiations. They could anticipate what the hostages would do. They saw certain signs when there was a change in behavior, and they advised us when we were sitting down discussing the first 12 demands given to me in my first session.

They were so learned and scholarly in their grasp of what was going on. I got a small session in therapy, because at one point I began to feel like I was falling apart. I mean, the trauma of knowing you might fail. I kept saying to myself, suppose this fails and then Jo-Jo tells the world, Chuck Stone screwed up, it was his fault.

It was as much a possibility as the chance of success. Dr. Keaney always managed to talk with me. He would say, you are feeling that you're going to fail now, aren't you? I replied yeah. And he went through a whole series of statements reassuring me, what they were doing, what we were doing, and it was right.

Their performance was very low key, but I cannot say enough to laud the work of the Federal prison officials. Their budget deserves to be tripled. They are just really good people and you should be proud as a U.S. Senator that we have such an excellent system compared to the cesspools that operate in the States around here.

So had there not been the Federal officials there I do not think the solution would have come as quickly.

Senator SPECTER. When you commented that the people——

Mr. STONE. And I want to commend Governor Thornburgh for bringing them in, because he had been an assistant U.S. attorney general here and he knew the Federal prison officials and he requested that somebody be brought in. It was his foresight.

Senator SPECTER. I think Governor Thornburgh did an outstanding job.

Mr. STONE. That was the difference between him and Governor Rockefeller, Thornburgh's flexibility. After we had the first negotiations we talked to the Governor's office. They were very flexible on demands and I think that was a big factor, his flexibility, his understanding, as well as the Federal officials.

We were all working together. There was no one person solving that problem.

Senator SPECTER. I think the Governor did respond with foresight and flexibility, and I think his own experience as a U.S. attorney and as an assistant attorney general gave him a background to understand a lot of the mentalities involved and a lot of the problems.

You made a comment that they say they never eat in the messhalls. If they do not eat in the messhalls, where do they eat?

Mr. STONE. The commissary.

Senator SPECTER. They pay for their food separately?

Mr. STONE. They earn their money and their families send it. There are not a lot of people doing this. In the afternoon, between the morning and afternoon sessions, I ate in the guards' messhall and the food was awful. I said, if you guys eat like this, what must the prisoners be getting?

I could not eat it. I sort of dabbled around with it. I just wanted something in my stomach, I was so tense. But it was not something I wanted to repeat.

Senator **Specter**. Do you see any hope for any improvement in something as basic and important as food?

Mr. **Stone**. I think if we really made a concerted effort. I know it cannot be a country club. But there ought to be minimum standards for food. That is the essence of survival.

These guys are spending their money to eat, to get food from the commissary or other places, or what friends bring them and send them and so forth, rather than eat in the messhall. Jo-Jo Bowen never ate in the messhall. Of course, he was afraid he might get killed. But he said the food was bad.

[Copy of the Graterford agreement follows:]

ISSUES AGREED UPON WILL BE HONORED ONLY WHEN ALL THE HOSTAGES ARE RELEASED UNHARMED:

1. Bureau of Corrections agrees to provide safe conduct for Bowen, Newsome, Ellison, Williams, Hall, Sinclair and Graham to appropriate housing unit as designated by the Bureau of Corrections. Also includes medical and state police interviews

2. The Bureau of Corrections agrees that it will file no criminal charges against inmates who are not involved in the initial escape attempt or hostage taking.

3. The amount of hole time spent in disciplinary custody will be in accord with the Administrative Directive 801 governing Behavior Adjustment and Restrictive Housing procedures. No more than six (6) months in disciplinary custody, if no further misconducts occur.

4. Charges will be identified by the Pennsylvania State Police, after an investigation has been completed.

5. Bureau agrees to provide signed documents confirming the agreements reached in negotiations.

~~6. Any money owed, as a result of destruction of State property, will be deferred until inmates are in working status. At that time, a small percentage will be deducted from their wages, monthly.~~ No $ incurred for destruction of state property

7. Bureau agrees that visits and treatment will not be affected by the present charges.

✓8. Mr. Chuck Stone has agreed to provide complete coverage of the charges.

9. The Bureau concurs with the initial defendants acceptance of the charges.

10. The Bureau agrees to permit visiting immediately after the institution resumes normal operation.

11. A radio will be issued for a period of 24 hours immediately following the release of the hostages.

12. Everything agreed to we will put in writing.

Date: November 2, 1981

Signed: Julius T. Cuyler
Julius T. Cuyler
Superintendent-S.C.I.G.

Signed: Erskind DeRamus
Erskind DeRamus
Deputy Commissioner
Bureau of Correction

Chuck Stone

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13. The Federal Authorities have agreed to accept the following inmates into the Federal Bureau of Prisons if State officials request. Joseph Bowen, Lawrence Ellison, Calvin Williams, LeRoy Newsome. AND HALL SINCLAIR AND GRAHAM ZSG

14. The Bureau and Federal Authorities agree to weekly contacts by someone in authority for all of Joe's people.

15. The Federal Bureau of Prisons will treat these inmates like any other State Boarders.

16. A change of venue is the responsibility of the courts; however, the Bureau of Corrections agrees not to oppose any such recommendation.

17. Any of the ~~four~~ 2 ZSG inmates transferred from Graterford to the Federal Bureau of Prisons will be treated like any other inmate in Federal custody.

18. Upon request by the Bureau of Corrections, the Federal Government will make an immediate effort to transfer the following inmates to a Federal facility. Joseph Bowen, Lawrence Ellison, Calvin Williams, LeRoy Newsome. AND HALL SINCLAIR AND GRAHAM ZSG

19. Radio request is covered in Item #11.

DATED: November 2, 1981

SIGNED: Julius T. Cuyler
Julius T. Cuyler
Superintendent

SIGNED: Erskind DeRamus
Erskind DeRamus
Deputy Commissioner

SIGNED:
Z. Stephen Grzegorek
Regional Director
Federal Bureau of Prisons

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Senator SPECTER. You have provided us with copies of the agreements which you executed?

Mr. STONE. Yes, sir.

Senator SPECTER. Which were signed by Julius Kyler, the superintendent, Erskin Doramus, deputy prison warden, as well as you.

Mr. STONE. I had to sign it because one of the terms of the agreement was that I would write about the prison conditions in subsequent columns.

Senator SPECTER. Can you tell us a little bit about the negotiations, the actual formulation of the contract, the way that worked out?

Mr. STONE. When I arrived, I sat down in this little corridor. Jo-Jo's brother, Jeff and I had these folding chairs against the wall. It was a very narrow hall. We could reach out and touch each other, Jo-Jo in the doorway with the other three hostage-takers. And Williams had a metal clipboard with the list of, we called it the 12 negotiations. They never called them demands.

He started to hand it to me, and Major Vaughn, who was standing in back, said, "Do not touch it, do not touch it, slide it across the floor." And he did. I had brought my novel, King Strut, and I slid that across as an act of good faith.

He picked it up. The demands were in their handwriting.

I said, I will take these back and I will be back tomorrow morning. We talked about 45 minutes. They cut off negotiations because Jo-Jo had a fear that somebody would try to storm the kitchen in the dark. He would always cut off talking on the phone by 5:15 and say, I will see you tomorrow morning.

The next day I came back. They had agreed to all 12 demands, as you will see here. They were not signed at the time. I gave them to Jo-Jo. We began talking. He said basically everything here is cool. But he said, I have got some other problems, and then he began to talk and I began to write.

And I said—I get seven new demands. I said, let me read them back to you. That is the second page, seven demands. He said, yeah, yeah, that is it.

I told him I would be back in the afternoon to talk with him again to see if we could not negotiate these seven new demands. He said you will not be back. I said, yes, I will. He says, no, you will not; you cannot trust these honkies.

I said, Jo-Jo, I will be back if I have to come back naked by myself. I asked what time did he want to see me. He said you get your program together, about 4 o'clock.

There were some calls to Washington, D.C., involving the transfer of inmates from State to Federal prisons. It was a real quick job of xeroxing and writing out. He called me for 4:30. That is when I knew we were going to settle. He asked, "where is Chuck Stone? I want to see him."

I got there at 4:30. We sat down and he agreed to everything. Then he said, I got two other problems. You will see the changes on the second page. He said, I want to know if my other brothers can go with me to the Federal prison.

I said, well, I will go back and see. He also said, we do not feel like we should have to pay for the damage. And that got a little sticky, but the State officials agreed to it. So we had to cross that out and initial these other demands. Each line——

Senator **Specter**. They were concerned about paying for the damage.

Mr. **Stone**. He says, "man, I feel like they owe us for being oppressed," and so forth. I said, that is not going to happen.

Senator **Specter**. But the agreement does leave open the possibility of the filing of charges against them.

Mr. **Stone**. Oh, yes. They never had any problem with the charges. They always wanted to know how much time they would spend in the hole, what would the procedure be. They were not asking fór anything extravagant.

Senator **Specter**. Have they in fact been transferred to the Federal prison?

Mr. **Stone**. Yes. That night all seven were sent to the Lewisberg Prison. I do not know if they are all still there. I have gotten two Christmas cards from two of them and I plan to go visit them within the next couple of weeks.

Senator **Specter**. Do you plan to remain active on this issue into the future, Mr. Stone?

Mr. **Stone**. I really have no choice in a way. You get plugged in. I am doomed to be a part of this whole thing.

Two days ago when the policeman was shot, the wife of Mumia Abu-Jamalago who was accused of it, called me. I was with her last night at the hospital on the seventh floor. And his mother called me at home.

It is just my fate, I guess, to be involved.

Senator **Specter**. Well, a very interesting fate it is, Mr. Stone, and much to the benefit of the entire system.

Well, we very much appreciate your coming here. As soon as we heard about this we contacted you, because this subcommittee has jurisdiction over the issue of prisons and it has been a longstanding concern of the Committee on the Judiciary and of mine personally. And we are very grateful to you for taking the time to come here.

And on behalf of the committee I certainly do want to commend you for your willingness to participate. You were not exactly a volunteer in the sense that you did not step forward as a matter of your own choice. But when asked, I know that you stepped forward.

Mr. **Stone**. I thought I would simply make a telephone call, and say I'm here, come on out. I was horrified when I realized I was going to be negotiating face to face.

Senator **Specter**. Well, it is an interesting document which you have produced. It will be an interesting testimonial to any attorney or group of attorneys to have produced.

Mr. **Stone**. Thank you, sir.

Senator **Specter**. Thank you very much, Mr. Stone.

Our next and final witness is Mr. Alvin Bronstein, the executive director of the National Prison Project, American Civil Liberties Union, accompanied by Mr. Irving Joyner of the ACLU. Will you gentlemen step forward, please.

Mr. Bronstein is a graduate of City College of New York and New York Law School. He was in private practice from 1952 until 1964, and during the interval of 1968 to 1971 he worked in the Institute of Politics at Harvard University, the Kennedy School of Government, first as a fellow, then as associate director.

He currently is an adjunct professor at American University Law School and a frequent guest lecturer at schools across the country. Mr. Bronstein has trial experience as chief trial counsel for the Lawyers Defense Committee in Jackson, Miss., and as an ad hoc trial attorney for the NAACP and the Mississippi Freedom Democratic Party, the Black Panther Party, and various civil rights organizations.

STATEMENT OF IRVING JOYNER, LEGISLATIVE COUNSEL, NATIONAL PRISON PROJECT, AMERICAN CIVIL LIBERTIES UNION

Mr. JOYNER. I am Mr. Joyner.

Senator SPECTER. Is Mr. Bronstein—Mr. Joyner, we have a brief résumé on you. You are staff counsel of the National Prison Project for the ACLU, a graduate of Long Island University and the State University School of Law at Rutgers. You practice law at Raleigh, N.C.

Would you tell us your official position with the ACLU, Mr. Joyner?

Mr. JOYNER. I am the legislative counsel for the National Prison Project of the ACLU.

Senator SPECTER. Well, we are very much interested in your views on this legislation and look forward to your testimony.

Mr. JOYNER. Mr. Bronstein regrets his inability to be here.

I am pleased to appear before the subcommittee on behalf of the National Prison Project of the American Civil Liberties Union. We welcome this opportunity to raise what we feel are critical points regarding the bills presently being considered by this subcommittee.

Let me just state that the basic position of the National Prison Project is that incarceration has little effect or impact on reducing crime, and incarceration as a tool should only be used as a last resort. We would commend for this committee's review House bill 4492, which has been introduced by Congressman John Conyers in the area of sentencing, which we think makes a lot of sense.

Our feeling is that incarceration probably adds more to the problem of crime than anything else, because it has the effect of turning out bitter people who have no or few alternatives left to them except to continue a life of crime. We note for this committee's review the employment discrimination that affects people with criminal records and the adjustment problems that people with criminal records have and other problems that inmates suffer within the free world.

Senator SPECTER. Would you disagree with Mr. Stone's testimony that there are some people who simply cannot be released ever?

Mr. JOYNER. I think there are people that need to be treated in a different manner than they are presently being treated. I do not know if there are people that can never be released. I think that with proper treatment in those instances that most people can be released at some point and function at some level in society.

Senator SPECTER. What would the parameters be, as you see it, for the time when somebody ought to be sentenced to jail?

Mr. **Joyner**. What are the parameters?

Senator **Specter**. You do not disagree that in some cases it is necessary to incarcerate people who are convicted of crimes?

Mr. **Joyner**. Yes. Yes, in some cases that would be. When we look at the present prison population, it has been estimated that roughly 35 to 40 percent of the people in prison do not need to be there, and probably the number is higher than that. There are people in the institutions for which prison serves no worthwhile purpose.

Senator **Specter**. When you say 35 to 40 percent, how do you identify that large a figure?

Mr. **Joyner**. By people who are in prison and whose crimes are such that there are other means to provide the rehabilitation and punishment needed for them to get themselves back together.

Senator **Specter**. What kinds of inmates come within the category of that 35 to 40 percent you think should not be in prison?

Mr. **Joyner**. I think obviously you are talking about first offenders, or people who have committed nonviolent crimes.

Senator **Specter**. Are there first offenders who have committed nonviolent crimes; are there many first offenders who have committed nonviolent crimes?

Mr. **Joyner**. Around the country, oh, yes, there are. Unlike Massachusetts, listening to the district attorney's testimony, I know in the State of North Carolina the judges have no problems with imposing prison sentences on people, even those as first offenders.

Senator **Specter**. First offense for nonviolent crimes?

Mr. **Joyner**. Oh, yes.

In regard to the three bills that are presently before the committee, 1688, 1689, and 1690, we are opposed to both 1688 and 1689, and we would offer to Senator Specter suggestions for amending 1690. We think that 1690 is a bill that has the laudable purpose of requiring the States to provide all prisoners with a marketable job skill.

This bill goes on to direct that the parole authority of a State shall not release a prisoner sentenced under the laws of the State unless the State has met such obligation. Despite this laudable purpose, the bill specifically does not confer to the prisoner the right to receive a marketable skill and basic literacy from the State.

Senator **Specter**. We have a problem constitutionally in mandating that. We have gone about as far as we think we can go in the language of a good faith effort. Do you think that constitutionally the Congress can require the States to rehabilitate prisoners?

Mr. **Joyner**. No. Our point is federalism here would be violated. This is a matter that is best left up to the State.

Our recommendation is really designed to alleviate part of that problem. We would propose that a bill be offered that would provide financial resources to the States to use as a carrot to help them develop demonstration programs in this area. I know in the State of North Carolina there is something very similar to this going on with committed youthful offenders, where they are guaranteed various treatment programs in vocational, educational programs, and a number of other things that are designed to give them marketable skills.

And in some of those programs the recidivism rate has been as low as 3 percent. So we think that that can work. The problem is that there are no funds to expand that type of program. We think the Congress can, much in the same way they did with the juvenile status offenders, Juvenile Justice Act, provide funds to the State on the condition that they make this a part of their legislative enactments.

Senator SPECTER. Do you have a suggestion as to how much that would cost nationwide?

Mr. JOYNER. No. But we are talking about a demonstration project. We could start that off with a $2 or $3 billion demonstration project. The old LEAA had been involved in some efforts in that regard, and I think that some review of some of the things that they were doing would certainly work out.

Then we think that another approach would be for the Congress—and this would not cause any constitutional problem—to impose that obligation upon the Federal Bureau of Prisons and let the Federal Bureau of Prisons then serve as a model for the States. The Congress can enact legislation requiring the Federal Bureau of Prisons to provide each prisoner coming out of there with a marketable skill.

You have a smaller number of prisoners to deal with in terms of who would fall below that level, since most of the prisoners in the Federal system are people, more often than not, with at least a high school education. The number of people affected would be such that the funds that are necessary to implement such a program would not be as great as demonstration projects in the State.

So that is an alternative approach that we would recommend to the committee.

With regard to 1688, we think this is really a bad idea, because what it has the effect of doing is punishing the person who has been convicted in State court three times for the status that they enjoy as a career criminal. That has been specifically outlawed in the case of *Robinson* v. *California,* where the U.S. Supreme Court has indicated that a person cannot be punished for the status they enjoy, much the same way that a person who is a drug addict cannot be punished for being a drug addict, but can be punished for an act that they were involved in, specifically the act of selling drugs, using drugs, or possessing them.

Senator SPECTER. But does not 1688 in fact observe that distinction, because the life sentence would be imposed for the specific robbery or burglary, and a person would qualify for that as a result of having twice in the past having been convicted of robberies or burglaries? So it is not for the status; it is an enhancement, just like the habitual criminal statutes which some 45 States now have.

Mr. JOYNER. Well, Senator, it differs in that the state contemporaneously with the trial or the adjudication of the person, for the third, fourth, or fifth offense, is additionally charging the person as a career criminal. At that point there is a determination made, in most States by the jury, that that person is in fact a career criminal and then that person is eligible to be sentenced as a career criminal then.

Once you move from that point, the Federal Government would come in, not because a person has committed an act against the

Federal Government or violated any law that the Federal Government has on the books, but purely because they have been convicted in the State court of some crime. So to that extent they have now elevated themselves to the status of a career criminal and now the Federal Government will punish them because they are now a career criminal in the eyes of the State.

The other problem is that your bill talks about the third conviction. In many States a person is identified as a career criminal, only after four convictions or after five convictions. In the State of Texas, for instance, where they use three convictions, the statute is very clear that not only must a person be convicted a third time, but he must have been convicted a third time after having been convicted twice and having twice served sentences in the State penal system, which is a little narrower than the legislation that is being proposed here.

Under this bill the conviction for the third time of the offense, of burglary or robbery or whatever, would then make that a Federal crime, and we think that that is stretching the authority of the Congress and would violate the priniciples of federalism.

Then we have some problems with the costs that would be involved in that. We note that Federal prosecutors cannot handle the caseload that they presently have with the budget that they presently enjoy. There is every indication that with the cutback in funds that the capacity for them handling felony cases or cases before them will diminish considerably, and this will just add another burden to overworked U.S. attorney staffs.

There are no provisions here for any funds to aid the Federal Government in prosecuting these cases.

Then there are some problems we have with the definition of career criminals. We are just not clear if what we are talking about here are the so-called career criminals or just repeat offenders.

That comment also goes to the bill 1689, which we have some ambivalence about.

Senator SPECTER. Senate bill 1689 deals with those that have been convicted under State habitual criminal statutes, which you have already said you find more palatable in light of the protections which you say are present there.

Mr. JOYNER. Well, 1689 we just think is duplicative of a bill already passed, 18 U.S.C. 5003, which authorizes the transfer of the prisoners from State to Federal prisons, after agreement has been worked out between the State and the Federal Bureau of Prisons.

Senator SPECTER. But those agreements may or may not be worked out. Senate bill 1689 would make it a Federal responsibility to house habitual criminals sentenced to life.

Mr. JOYNER. Well, the Federal Government does in fact now have several thousand prisoners in the Federal Bureau system that come from the various States. Vermont, for instance, is one State, that send a lot of prisoners to the Federal system.

Senator SPECTER. Are you representing that those that have been sent to the Federal prisons are those that have been sentenced under State habitual criminal statutes?

Mr. JOYNER. No. These are people sentenced under any statute.

Senator **Specter**. Yes, because the State habitual criminal statutes are not used at the present time, by and large. The thrust of that legislation is to encourage the States to use them. But the incarceration would be handled by the Federal Government.

Mr. **Joyner**. Our experience is that those criminal statutes are being used. I have been in private practice in North Carolina for some time and I know that in that State a career criminal statute is being used. I know that in the State of Texas it is being used, and in any number of States it is being used.

It is generally left to the district attorney or the attorney general to trigger the use of that statute, but generally when that is triggered it is used.

Now, there was some comment here about the judges not following through and imposing the type sentences that the prosecutors would like in those cases, and that may be true. But in many instances a career criminal statute is used by the prosecutors, not necessarily to enhance the sentence that a person would get, but to guarantee that there will be a plea bargain to a higher charge or an agreement initially to a criminal penalty that is higher for that person than that person ordinarily would have been able to plead down to.

So really, a lot of that is left in the hands of the prosecutor rather than in the hands of the judge, and it depends on how strong the prosecutor wants to pursue that specific statute that determines what the judges will do more often than not.

Senator **Specter**. Thank you very much. We very much appreciate having you here. We appreciate your suggestions, Mr. Joyner.

If Mr. Bronstein would like to provide any other information to the subcommittee, we would be very pleased to receive that as well.

Mr. **Joyner**. We would just ask that our written testimony be made a part of the record.

Senator **Specter**. Your full testimony will be made a part of the record, which is the custom of the committee.

[The prepared statement of Mr. Joyner follows:]

PREPARED STATEMENT OF ALVIN J. BRONSTEIN AND IRVING L. JOYNER

We are pleased to appear before this Subcommittee to discuss S. 1688, S. 1689 and S. 1690. We are appearing in our capacity as Executive Director and Legislative Counsel of the National Prison Project of the American Civil Liberties Union Foundation. We welcome this opportunity to raise what we feel are critical points regarding the bills presently being considered by this subcommittee.

The National Prison Project is the largest legal advocacy organization for prisoners in this country and is the only organization that monitors the operations of the Federal Bureau of Prisons. As an organization we seek to strengthen and protect the civil and constitutional rights of adult and juvenile prisoners, to improve conditions in the nation's prisons and jails, and to develop rational, less costly and more humane alternatives to traditional incarceration. We have also engaged in efforts to devise model prison procedures and regulations.

In furtherance of the activities described above, the Project's staff attorneys and other staff members are engaged in the representation of prisoners incarcerated in penal institutions throughout the country. The Project has been and is presently involved in many important cases concerning the rights of prisoners. In addition, the Project's staff has been consulted by correctional officials and legislative committees in various States, the Federal government and Congress.

S. 1688

S. 1688, a bill to combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment, is a bad bill that should be rejected by this Subcommittee. The "Career Criminal Life Sentence Act of 1981", as it is titled, would make it a Federal offense to commit a robbery or a burglary "while using, threatening to use, displaying or possessing a firearm, after having been twice convicted of a robbery or a burglary in violation of the felony statutes of a State or the United States..."

If passed, the "Career Criminal Life Sentence Act of 1981" would make it a Federal crime for a person merely to commit three robberies or burglaries within any of the States. Ideally, we would assume that each State is in the best position to determine what conduct is tolerable in that State and how such conduct should be punished. If the State decides, through its' popularly elected legislature to condemn a career criminal, as defined by that State's legislature, to a life sentence, then that is the State's right.[1] But it is an entirely different matter when the Federal government decides to impose a criminal sanction against a person who has not committed a Federal offense. This is the height of overreaching by the Congress and is unconstitutional, unwarranted and has no rational basis.

As the bill relates to convictions for State crimes, the offender would be given an unreasonably harsh sentence merely for the status that he/she enjoys. The status in this case is that of a career criminal, which is not unlike the status of drug addict, alcoholic, unemployed or poor person. Thus, the Federal government would prosecute a person under the authority of this bill because he/she had become a career criminal via a State court determination.

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[1] See Rummel v. Estelle, 441 U.S. 960 (1980), and Spencer v. Texas, 385 U.S. 554 (1976)

A time-honored principle in the criminal law is that criminal sanctions are directed toward specific illegal actions and not against a persons' status.[2] Therefore, a drug addict is not prosecuted because he/she is an addict but only if that person is using, selling or possessing drugs illegally. This principle has either been forgotten by the author of this bill or there is a desire to totally ignore it.

With respect to the definition of a career criminal for violating Federal laws against armed robbery and burglary, the Congress can prescribe appropriate sanctions without violating or eroding the powers of the States. We would, however, seriously question the appropriateness of imposing a mandatory life sentence for a career criminal. Such a sentence is cruel, unusual and serves no penological purpose. Not only does this proposal severely limit the discretion of the trial judge, but it will have the dual effect of forcing all of these cases to trial and giving the prosecutor sentencing power through the discrection inherent in his/her use of plea bargains. The cost to try every Federal armed robbery and burglary charge would be enormous, even with the small number of such crimes presently committed under Federal jurisdiction.

The bill also seeks to set up an unreasonable and unworkable speedy trial and appeals mandate. Based on the bill, a trial would have to be held within sixty (60) days and any appeal must be decided within sixty (60) days. The experience with the present speedy trial bill indicates that the government will have to make a major committment of funds and other resources if these sections are to be strictly complied with. To date there has been a real problem in complying with the present 120 day speedy trial deadline. If they are not complied with, must the charges be dropped or the appeal granted? The bill does not seek to answer this question.

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[2] Robinson v. California, 370 U.S. 660 (1962)

For the above stated reasons, we would oppose the passage of this legislation.

S. 1689

S. 1689 is another example of an ill-conceived legislative proposal. This bill would authorize the incarceration in Federal prisons of persons sentenced to life imprisonment under the habitual criminal statutes of the States. The basic rationale for this proposal is to lock so-called "career criminals" away in Federal prisons, to ease overcrowding and to incarcerate such persons in a safe, secure and humane manner. The States would not have to pay the Federal government for its' housing of the career criminals.

There is absolutely no need for this type of legislation. Congress has already passed a law that would allow State inmates to be transferred to Federal prisons, 18 U.S.C. §5003. This Act allows the States to transfer any inmate to the Federal prison system for whatever reason the State deems appropriate. S. 1689 would merely duplicate, in a narrower form, the authorization that has already been given to the States.

Moreover, the number of persons that would be affected by this bill is so small that there is no reason for the

Federal government to get involved. There is no showing here of any adverse impact on interstate commerce by the various States' continuing to incarcerate their own career criminals.

Further, we question whether "career criminal" is defined here in the same manner as "repeat offender". A repeat offender and a career criminal are different things, but this bill seems to treat the two as being the same. Therefore, there is a need to carefully define what is being advocated here.

For the above reasons, we would urge that S. 1689 be rejected.

S. 1690

S. 1690 has the laudable purpose of requiring the States to provide all prisoners with a marketable job skill and basic literacy. Obviously the bill is aimed at improving job opportunities for prisoners once they are released and of decreasing the present rate of recidivism. This bill goes on to direct that the parole authority of the State "shall not release a prisoner sentenced under the law of the State to a term of two years or more...unless the State has met such obligation". Despite its laudable purpose, the bill specifically does not confer a right on the prisoner to receive a marketable skill and basic literacy from the State.

As laudable as the bill's basic purpose is, we are compelled to oppose S. 1690 in its present form for several reasons. By forbidding the State parole authorities from granting a parole to a prisoner until after the prisoner has obtained a marketable skill and basic literacy, the prisoner will be further punished for the failures or shortcomings of the State. Obviously there is the expectation in every prisoner that he/she will have the opportunity to obtain parole after serving a statutory minimum sentence. Moreover, the Supreme Court has held that if parole is based upon statute, regulation or well-settled practice, due process requirements must be met when parole decisions are made.[3]

Parole decisions are generally premised upon the expiration of a statutory minimum sentence and the good conduct of the prisoner while incarcerated. Thus, a prisoner's parole is properly based upon what the prisoner does and what he/she proposes to do while on parole. Therefore, it would be inappropriate and illegal for the prisoner to be denied parole, once eligible, because of the failure of the State to provide the prisoner with a "marketable skill and basic literacy".

A basic question about this bill is, how is it to be enforced? The author makes it a point that a prisoner is not granted a right to receive a "marketable skill and basic literacy". In the absence of such an individually conferred right, a prisoner cannot go into a Federal or State Court to petition that Court to force the State to fulfill the obligation created under this bill. The bill, as drafted, does not specifically give the Attorney General's Office or any other Federal or State agency the power to enforce this new obligation that is to be imposed upon the State. Thus, the bill, if passed, would be no more than a philosophical statement of Congress having no force as law. Such an act would be a cruel hoax on the over 500,000 prisoners in this country.

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[3] Greenholtz v. Inmates of Nebraska, 99 S.Ct. 2100 (1979)

It appears that the author of the bill failed to review the U.S. Supreme Court recent ruling in Pennhurst v. Halderman.[4] In that case the Court made clear, as a matter of legislative interpretation, that if the Congress intended the States to make large outlays of monies, that the Congress should make this obligation explicit in its legislation. In the absence of explicit language in this regard, the Supreme Court held that the States could not be obligated to spend massive sums of money to improve the conditions of a segment of the populous. The legislative deficiencies spoken to in Pennhurst v. Halderman are present in S. 1690 and would be held by the Court to be no more than wishes of Congress and carries no legal duties or obligations. In Pennhurst, the Court held that the language of the legislation must provide clear notice to the States as to what their obligations are.

We should stress once again that we are in support of a requirement that States provide inmates with marketable skills and basic literacy. Instead of the approach suggested in S. 1690, we would suggest that the Congress appropriate a specific sum of money that the States can use for demonstration projects and/or matching funds to aid the States providing such programs. The receipt of these funds should be contingent upon the States' passing legislation conferring upon itself the obligation to provide marketable skills and basic literacy to its inmates. Such an approach was used successfully by the Congress to decriminalize juvenile status offenders.

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[4] In Pennhurst v. Halderman, ___S.Ct.___, #79-1404 (April 20, 1981), the State of Pennsylvania challenged a ruling under the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §§6010 (1) and (2), which stated that mentally retarded persons had a right to appropriate treatment, services and habilitation in a setting that is least restrictive of personal liberty. This Act was enacted by Congress under §5 of the Fourteenth Amendment.

An alternative approach would be for the Congress to impose the obligation of providing marketable skills and basic literacy upon the Federal government and then to appropriate funds to aid persons being held in Federal prisons. This could serve as a model program and the States could then be urged to adopt this approach.

Utilizing either approach would require that the affected inmates would have to receive the right to a marketable skill and basic literacy or that some Federal agency be explicitly given the right and power to enforce this obligation on either the State or Federal government.

Without some amending language, such as suggested above, S. 1690 should not be enacted into law.

Senator **Specter**. Thank you very much.

The committee is adjourned.

[Whereupon, at 12.21 p.m., the subcommittee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

AMERICAN CORRECTIONAL ASSOCIATION
4321 Hartwick Road, Suite L-208 • College Park, Maryland 20740 • 301-699-7600

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William J. Taylor
Manager, Education & Training Services

December 11, 1981

The Honorable Charles McC. Mathias, Jr.
Chairman, Subcommittee on Criminal Law
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator Mathias:

The American Correctional Association (ACA) is pleased to be placed on Committee record in favor of S. 1597, a Bill to Establish a Corporation for Prison Industries.

S. 1597 is similar to amendment no. 482 to S. 951 offered by Senator Dole. The American Correctional Association supports the enhancement of prison industry programs with correctional institutions.

The American Correctional Association commented on S. 1690 in our letter under date of October 26, 1981, sent to your Subcommittee on Juvenile Justice. A copy of said letter is enclosed for inclusion in the hearing record.

Peace,

Anthony P. Travisono
Executive Director

Enclosure
CC: Amos Reed
APT/BH/dg

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Manager, Education & Training Services

October 26, 1981

Mr. Bruce A. Cohen
Chief Counsel
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Bruce:

Thank you for your letter of October 16, 1981. The attachments to our letter response to the Attorney General's Task Force on Violent Crime are herewith enclosed.

We have completed a review of S. 1688, 1689, and 1690.

We support consideration of S. 1689 in its present form provided:

1. That it be prospective from the date of enactment.
2. That it apply only to those persons convicted by states and sentenced to life imprisonment under state habitual criminal statutes.

S. 1688 we support without reservation in the case of career criminals, and assuming that this class of offender could be institutionalized in accordance with the provisions of S. 1689, if passed.

S. 1690, the purposes for which this legislation is advocated are commendable. However, we believe that these important objectives could more realistically be achieved if the recommendations of the National Advisory Council on Vocational Education and the Department of Education (Corrections Section)

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were adopted as proposed and the present vocational education law amended accordingly. We have requested the Department of Education to forward a complete set of these proposals to you directly and commend them to you for your consideration.

When a firm agenda for Subcommittee hearings is developed, we would welcome the opportunity to submit our position to you for the record either in writing or, at the pleasure of the Committee, in oral testimony.

Peace,

Anthony P. Travisono
Executive Director

Enclosures
CC: Amos Reed, President, ACA
APT/BN/dg